25. The handling of plaintiffs' baggage at New Haven by Defendant's Red-Cap was an incident to Plaintiff Mrs. Nothnagle's interstate journey.

26. The rights and liabilities of the parties are governed by federal legislation as applied in federal courts; and particularly by the Interstate Commerce Act and the applicable tariffs on file with the Interstate Commerce Commission.

27. Defendant's tariff was binding regardless of lack of knowledge, actual or constructive, or assent thereto by Plaintiffs, or either of them.

28. Since no declaration of greater value was made in writing, Defendant's liability for loss of Plaintiff's baggage is limited to $25.00.

29. Judgment should enter for Plaintiff for $25.00 in accordance with Defendant's offer of judgment on file.

30. The claims of law made by the Defendant in paragraphs 25, 26, 27, 28, and 29 of the finding are overruled.

V

Any exhibit may be used in argument in the Supreme Court of Errors without being printed.

Jos. W. Bogdanski, Judge.

[Filed March 22, 1951.]

MOTION TO CORRECT FINDING.

Defendant respectfully moves the Court that it correct its Finding in the above-captioned case:

1. By adding to Part IV of the Finding the claims of law made by defendant as set forth in paragraphs 22 to 27, inclusive, of defendant's draft finding (incorporating paragraphs 15 to 20, inclusive, of the draft finding).

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PETITIONER,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

PETITION FOR CERTIORARI FILED DECEMBER 31, 1952
CERTIORARI GRANTED MARCH 9, 1953

2. By adding to the Finding a direction, pursuant to Section 346 of the Practice Book, that exhibits in the case may be used in argument in the Supreme Court without being printed.

The Defendant,
By RALPH W. PICKARD,
Its Attorney.

ORDER.

3/13/51.

The foregoing motion having come before the Court, and the Court having found the same ought to be granted.

The same is hereby granted.

By the Court,
JOSEPH F. NOONAN,
Clerk.

[See paragraphs 21 through 29 of Corrected and Amended Finding, page 9.]

[Filed March 7, 1951.]

ASSIGNMENT OF ERRORS.

The Court erred:

1. In finding the conclusions in paragraphs 16, 17, 18 and 19 of the finding when the facts admitted in the pleadings and set forth in the finding do not support them.

2. In overruling the claims of law made by defendant stated in paragraphs 24 to 29, inclusive, of the finding.

3. In rendering judgment upon the facts admitted in the pleadings and set forth in the finding because (a) plaintiff Mrs. Nothnagel was engaged on an interstate journey on October 5, 1949; (b) the handling of plaintiffs' baggage at New

Haven by defendant's redcap on that date was an incident to plaintiff Mrs. Nothnagel's interstate journey; (c) the rights and liabilities of the parties are governed by federal legislation as applied in federal courts, particularly the Interstate Commerce Act and applicable tariffs on file with the Interstate Commerce Commission; (d) defendant's tariff was binding irrespective of lack of knowledge, actual or constructive, or assent thereto by plaintiffs or either of them; (e) since no declaration of greater value was made in writing defendant's liability for loss of plaintiffs' baggage was limited to $25.00; (f) judgment should enter for plaintiffs for $25.00 only in accordance with defendant's offer of judgment on file.

Defendant,
By RALPH W. PICKARD,
Its Attorney.

[Filed March 22, 1951.]

MOTION TO AMEND FINDING.

The Plaintiff moves that the finding of said Court be amended by adding thereto the following: 1. The claims of law made by the Defendant in paragraphs 25, 26, 27, 28 and 29 of the finding are over-ruled.

Respectfully submitted,
Plaintiff,
By FRANCIS W. DANAHER,
Her Attorney.

[Granted, July 2, 1951, by BOGDANSKE Judge.]

[See paragraph 30 of Corrected and Amended Finding, page 10.]

[Filed March 31, 1951.]

JUL 11 1952

THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

NEW HAVEN COUNTY

APRIL TERM, 1951

3675

MRS. GEORGE NOTHNAGLE ET AL.
vs.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

City Court of Meriden,
New Haven County,
November 25, 1950.

APPEARANCES.

For the Plaintiffs:
FRANCIS R. DANAHER, Esq.

For the Defendant:
RALPH W. PICKARD, Esq.,
THOMAS J. O'SULLIVAN, Esq.

DEFENDANT'S APPEAL FROM THE CITY COURT OF MERIDEN.

Hon. JOSEPH W. BOGDANSKI, Judge.

SUPREME COURT OF ERRORS,
NEW HAVEN COUNTY, } Clerk's Office,
June 30, 1952.

The above and foregoing is a true copy of the record in said case to be used in the trial in the Supreme Court of Errors.

EDWARD HORWITZ, Clerk.

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EXHIBITS.

(Not Printed.)

Plaintiffs' exhibit:

A. New England Joint Tariff RC No. 3-N.

Defendant's exhibits:

1. Letter, October 13, 1949.
2. Letter, October 19, 1949.
3. Letter, October 31, 1949.
4. Letter, November 23, 1949.
5. Letter, December 15, 1949.

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[fol. 14] STATE OF CONNECTICUT, SUPREME COURT OF ERRORS, HARTFORD,

November 25, 1952

To the Clerk of the Supreme Court of Errors for New Haven County, The Supreme Court of Errors has decided the following case:

No. 3675

MRS. GEORGE NOTHNAGLE et al

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

There is no error.

Opinion by Baldwin, J.

(S.) Allyn L. Brown, Chief Justice.

[fol. 15] SUPREME COURT OF ERRORS, OCTOBER TERM, 1952

MRS. GEORGE NOTHNAGLE et al v. THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

Action to recover damages for the loss of baggage, alleged to have been caused by the negligence of the defendant, brought to the City Court of Meriden and tried to the court, Bogdanski, J.; judgment for the named plaintiff and appeal by the defendant. No error.

Thomas J. O'Sullivan, for the appellant (defendant).

Francis R. Danaher, for the appellee (named plaintiff).

BALDWIN, J.

The plaintiffs brought suit against the defendant, claiming damages because of its negligence in losing baggage belonging to them and entrusted to it by the named plaintiff. The defendant made an offer of judgment in the amount of $25 which the plaintiffs refused. The defendant thereupon filed an answer denying liability. In a special defense, it alleged further, in substance, that its liability as a carrier engaged in inter-state transportation was deter-

THE
SUPREME COURT OF ERRORS
OF THE
STATE OF CONNECTICUT

NEW HAVEN COUNTY

APRIL TERM, 1951

3675

MRS. GEORGE NOTHNAGLE ET AL.	City Court of Meriden, New Haven County, November 25, 1950.
vs.	
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.	

APPEARANCES.

For the Plaintiffs:
FRANCIS R. DANAHER, Esq.

For the Defendant:
RALPH W. PICKARD, Esq.,
THOMAS J. O'SULLIVAN, Esq.

DEFENDANT'S APPEAL FROM THE CITY COURT OF MERIDEN.

Hon. JOSEPH W. BOGDANSKI, Judge.

To the Sheriff of the County of New Haven, His Deputy, or Either Constable of the Town of New Haven Within Said County—Greeting:

By authority of the State of Connecticut you are hereby commanded to summon the New York, New Haven & Hartford Railroad Company, a corporation, to appear before the City Court of Meriden, to be holden at Meriden, in and for the County of New Haven on the fourth Tuesday of January, 1950, then and there to answer unto Mrs. George Nothnagle and George Nothnagle; both of said City of Meriden, said County and State, in a civil action wherein the Plaintiff complains and says:

1. On or about the 5th day of October, 1949, the Plaintiff, purchased a ticket for passage upon trains operated by the Defendant from Meriden to New Haven to Fall River, Massachusetts.

2. Said Defendant was a corporation engaged in interstate commerce and passenger transit for hire.

3. On said day, the Plaintiff boarded the train operated by the Defendant at Meriden, at 11:19 A. M. and arrived at New Haven with her baggage shortly after 11:30 A. M.

4. Said Plaintiff alighted from said train to the platform of the station owned, operated and maintained by the Defendant, and was approached by an employee of said Defendant (commonly called a 'Red Cap'), who solicited her baggage.

5. Said Plaintiff, relying upon said Defendant, its servants and agents, surrendered her baggage to said red-cap with orders to have said baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M.

6. Said red-cap did not return her baggage to her at that time or at any other time; and said baggage was lost to her, to her great damage.

7. Said baggage consisted of a suitcase containing a diamond ring, costume jewelry, two dresses, a suit, underclothing,

shoes and silver mounted brush and comb, all belonging to the Plaintiff Mrs. George Nothnagle; belonging to Mr. Nothnagle were ties, shirts, pajamas, socks; shorts and handkerchiefs.

8. Said baggage was lost through the negligence, carelessness and heedlessness of said Defendant, its servants and agents.

Plaintiff, Mrs. George Nothnagle claims $550 damages.

Plaintiff, Mr. George Nothnagle claims $100 damages.

Plaintiff of Meriden is recognized in $70 to prosecute.

I, Francis R. Danaher, the subscribing authority hereby certify that I have personal knowledge as to the financial responsibility of the Plaintiffs and deem it sufficient to pay costs in this action.

Of this writ, with your doings thereon make due service and return.

Dated at Meriden, this 28th day of December, 1949.

/s/ FRANCIS R. DANAHER,
Commissioner of the Superior Court
for New Haven County.

OFFER OF JUDGMENT.

Defendant hereby gives notice that it offers to permit plaintiffs to take judgment in the above-captioned action for Twenty-Five Dollars ($25.00), together with such interest and costs as may be allowed by law.

Defendant,
By /s/ RALPH W. PICKARD,
Its Attorney.

To: Francis R. Danaher, Esq.,
30 Colony Street,
Meriden, Connecticut.

[Filed Sept. 25, 1950.]

AMENDED ANSWER.

First Defense:

1. Paragraphs 1, 2, 3, 4, 5 and 6 of plaintiff's complaint are admitted.

2. Paragraphs 7 and 8 of plaintiff's complaint are denied.

Second Defense:

1. At all times referred to in plaintiffs' complaint, defendant had on file with the Interstate Commerce Commission and there was in effect a tariff known as "New England Joint Tariff RC No. 3-N" regulating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by station porters ("Red Caps").

2. Paragraph 2 of said tariff limited defendant's liability for each piece of baggage or parcel (including its contents) to a maximum of Twenty-Five Dollars ($25.00) per bag or parcel unless a greater value was declared in writing by the passenger.

3. No greater value was declared by plaintiff with respect to the baggage referred to in the complaint and defendant's liability (if any) is limited to Twenty-Five Dollars ($25.00).

Defendant,
By /s/ RALPH W. PICKARD,
Its Attorney.

[Filed Sept. 26, 1950.]

MEMORANDUM OF DECISION.

This is an action based on negligence in the safe-keeping of a travelling bag placed in the custody of defendant's agent. The stipulation at the outset of the trial admitted damages of $515.00, and further admitted the allegations in the plaintiff's complaint. The plaintiff had alleged negligence in her complaint and there was evidence given by her in the trial to substantiate this allegation.

It appeared to the Court that the baggage was delivered to the defendant for safe-keeping only. That being the case, the case of *Allen vs. Southern Pacific Company*, Utah 213P, 2nd 667 is decisive in the present case. There the court indicated that "since the bag was left for safe-keeping and not for transportation, the case was distinguishable from cases involving baggage or other personal property in interstate commerce.

Wherefore, the court finds the issues for the plaintiff and renders judgment in the sum of $615.00 plus taxable costs.

BOGDANSKI, Judge.

[Filed Nov. 25, 1950.]

State of Connecticut.

MRS. GEORGE NOTHNAGLE and GEORGE NOTHNAGLE, both of the City of Meriden, County of New Haven, State of Connecticut

vs.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, a corporation.

City Court of Meriden, County of New Haven, November 25th, 1950.

Present, HON. JOSEPH W. BOGDANSKI, Judge.

JUDGMENT.

This action, by writ and complaint, dated December 28th, 1949, in which the plaintiff, Mrs. George Nothnagle, claims $550.00 damages and the plaintiff, Mr. George Nothnagle, claims $100.00 damages, came to this Court on the first Tuesday of January, 1950, and thence to August 17th, 1950 when the defendant filed its answer, and thence to September 25th, 1950 when the defendant filed an offer to permit the plaintiffs to take judgment for $25.00, together with such interest and costs as may be allowed by law, and thence to September 26th,

1950 when the defendant filed an amended answer, and thence to the present time when the plaintiff, Mrs. George Nothnagle, and the defendant appeared and were at issue to the Court, as on file.

The Court, having heard the plaintiff, Mrs. George Nothnagle, and the defendant, finds the issues for the plaintiff, Mrs. George Nothnagle.

Whereupon it is adjudged that the plaintiff, Mrs. George Nothnagle, recover of the defendant Six Hundred Fifteen Dollars ($615.00) damages, and her costs taxed at

JOSEPH W. BOGDANSKI, Judge.

DEFENDANT'S APPEAL.

In the above-entitled case the Defendant appeals from the Judgment of said Court to the Supreme Court of Errors.

The Defendant,
By RALPH W. PICKARD,
Its Attorney.

I certify that the foregoing appeal was filed on the 13 day of January, 1951; that the Defendant has paid the record and entry fees of the Supreme Court of Errors; and that Thomas J. O'Sullivan of Orange is recognized in the sum of Eight Hundred and Fifty Dollars ($850.00) conditioned that said Defendant shall prosecute said appeal to effect and pay all costs therein if it shall fail to do so; and said appeal is hereby allowed.

GEO. J. KILROY, JR.,
Asst. Clerk.

[Filed Jan. 13, 1951.]

CORRECTED AND AMENDED FINDING.

[See Motion to Correct Finding, page 10 and Motion to Amend Finding, page 12.]

In the above case, which was tried to the Court upon the issues of the complaint, as on file, the following facts are found:

1. On the 5th day of October, 1949, the Plaintiff, Mrs. George Nothnagle, purchased a ticket for passage upon trains operated by the Defendant, from the City of Meriden to the City of New Haven, both within the State of Connecticut and to Fall River, Massachusetts.

2. The Defendant was a corporation engaged in interstate commerce and passenger transit for hire.

3. On October 5, 1949, Plaintiff, Mrs. Nothnagel, boarded the train operated by the Defendant at Meriden, Connecticut, at 11:19 A. M. and arrived at New Haven with her baggage shortly after 11:30 A. M.

4. At New Haven Plaintiff, Mrs. Nothangel, alighted from the train from Meriden to the platform of the station owned, operated and maintained by the Defendant, and was approached by an employee of the said Defendant (commonly called a "Red-Cap") who solicited her baggage.

5. Said Plaintiff, relying upon said Defendant, its servants and agents, surrendered her baggage to said Red-Cap with orders to have said baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M.

6. Said Red-Cap did not return her baggage to her at that time or at any other time; that said baggage was lost to her, to her great damage.

7. Said baggage consisted of a suit-case containing a diamond ring, costume jewelry, two dresses, a suit, underclothing, shoes and silver mounted brush and comb, all belong-

ing to the Plaintiff, Mrs. Nothnagel; belonging to Mr. Nothnagel were ties, shirts, pajamas, socks, shorts and handkerchiefs.

8. The baggage and its contents was reasonably worth Six Hundred and Fifteen (615.00) Dollars.

9. On October 5, 1949, the Defendant had on file with the Interstate Commerce Commission a tariff entitled "New England Joint Tariff R.C. No. 3-N" stating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by station porters ("Red-Caps").

10. Paragraph 2 of said tariff stated that Defendant's liability for each piece of baggage or parcel (including its contents) would be limited to Twenty-five (25.00) Dollars unless a greater value was declared in writing by the passenger.

11. No greater value was declared in writing by Plaintiff, Mrs. Nothnagel, with respect to the baggage surrended to Defendant's Red-Cap at New Haven, Connecticut, on October 5, 1949.

12. There was no evidence offered that Plaintiffs or either of them paid or intended to pay anything of value for handling said baggage at New Haven on October 5, 1949.

13. Said Red-Cap gave the Plaintiff no ticket or any other evidence of a claim or claim check nor any other item with printing or any statement of limitation of liability upon it; and said Plaintiff had no knowledge of the tariff referred to in Paragraph 9.

14. There were no signs posted at any point calling the attention of the passenger to the fact that the Defendant attempted to limit its liability by the use of the tariff referred to.

15. Said baggage was lost through the negligence, carelessness and heedlessness of said Defendant, its servants and agents.

II

The following conclusions have been reached:

16. Said Defendant was a bailee of said baggage.

17. The baggage of the Plaintiff was left with the Defendant for safe-keeping and not for transportation and, therefore, was not in Interstate Commerce.

18. The rights and liabilities of the parties are covered by the law of the State of Connecticut concerning bailments.

19. Judgment was rendered for the Plaintiff to recover Six Hundred Fifteen (615.00) Dollars plus their costs.

III

The following rulings were made on the trial:

20. The Attorneys for the parties herein stipulated to the Court that all of the matters alleged in the Plaintiff's complaint are admitted and that the value of the contents of the baggage be set at Six Hundred Fifteen (615.00) Dollars; that Defendant's only defense would be the application of the tariff as filed with the Interstate Commerce Commission.

IV

The Plaintiff made the following claims of law:

21. That said baggage was not engaged in Interstate Commerce.

22. That the law applicable was the law of bailments.

23. That the Defendant could not limit its liability for negligence.

The Defendant made the following claims of law:

24. Plaintiff Mrs. Nothnagle was engaged on an interstate journey on October 5, 1949.

mined by a tariff schedule on file with the interstate commerce commission which established charges for, and liability with respect to, the handling of baggage. This tariff limited recovery for the loss of baggage to the sum of $25 unless a greater value was declared in writing by the passenger. On the trial, the parties entered into a stipulation admitting the allegations of the complaint, fixing the actual value of the baggage at $615, and stating that the defendant's only defense would be the application of the tariff limiting liability to $25. The court rendered judgment for the named plaintiff to recover the sum of $615 and her costs. The defendant has appealed.

The following facts were found by the trial court: On October 5, 1949, the named plaintiff, hereinafter called the plaintiff, purchased a ticket for passage upon trains operated by the defendant, a corporation engaged in interstate commerce and passenger transit for hire, from Meriden to New Haven, in Connecticut, and to Fall River, in Massachusetts. She boarded the train at Meriden and arrived at the defendant's station in New Haven shortly after 11:30 a. m. She got off the train and was approached by a redcap employed by the defendant, who solicited her baggage. She surrendered it to him with orders to return it to her at the train leaving for Fall River at 12:40 p. m. The redcap did not return her baggage. It was lost by reason of the negligence of the defendant and its agents. It was worth $615. The defendant had on file with the interstate commerce commission a tariff entitled "New England Joint Tariff RC No. 3-N," which limited its liability with respect to the handling of hand baggage by redcaps to $25 unless a greater value was declared in writing by the passenger. The plaintiff did not make any written declaration of a greater value. There was no evidence offered that she paid or intended to pay anything of value for the handling of the baggage. The redcap did not issue any ticket or check. There were no signs posted at any point calling the attention of passengers to the fact that the defendant's liability was limited by any tariff schedule. The plaintiff had no knowledge of any tariff limiting liability. From these subordinate facts, the court concluded that the baggage was left with the defendant for safekeeping and

not for transportation in interstate commerce, and that the defendant's liability was determined by the laws of Connecticut concerning bailment. The appeal tests the correctness of this conclusion.

If the baggage, while in the possession of the defendant, was in interstate commerce, the limitation of liability set forth in the tariff filed with the interstate commerce commission is applicable and controls the decision of the court even though the plaintiff had no actual knowledge of the tariff. *Boston & M. R. R. v. Hooker*, 233 U. S. 97, 110, 34 S. Ct. 526, 58 L. Ed. 868; *Nashville, C. & St. L. Ry.* v. *Ham*, 78 Ga. App. 403, 414, 50 S.E.2d 831; 24 Stat. 380 (§ 6), as amended, 49 U.S.C. § 6(1). The term "interstate commerce" is not a technical legal conception but a practical one. *Foster-Fountain Packing Co.* v. *Haydel*, 278 U.S. 1, 10, 49 S. Ct. 1, 73 L. Ed. 147; 11 Am. Jur. 9, § 4, 29, § 28; see *McLeod* v. *Threlkeld*, 319 U.S. 481, 495, 63 S. Ct. 1248, 87 L. Ed. 1538. The fact that the defendant was a common carrier engaged generally in interstate commerce is not conclusive. The question is whether the particular transaction involved was in interstate commerce or so directly and immediately connected with it as to be a part of it or a necessary incident to it. *Sullivan* v. *New York, N.H. & H. R. Co.*, 105 Conn. 122, 127, 134 A. 795; *Moran* v. *New York, N.H. & H. R. Co.*, 109 Conn. 94, 98, 145 A. 567. The determination of its character is largely a matter of fact. *Southern Pac. Co.* v. *Arizona*, 249 U. S. 472, 477, 39 S. Ct. 313, 63 L. Ed. 713; *Railroad Commission* v. *Worthington*, 225 U. S. 101, 108, 32 S. Ct. 653, 56 L. Ed. 1004.

The defendant claims that the plaintiff was engaged in an interstate trip because she had purchased a ticket from Meriden, in Connecticut, to Fall River, in Massachusetts, and that the handling of her baggage by the redcap was incidental to that trip and in furtherance of it. The terms of a ticket or a bill of lading are merely evidential. They are not conclusive as to the nature of a journey or a shipment. "The law looks at the substance of the thing done." *Boston & M. R. R. v. Cate*, 254 Mass. 248, 250, 150 N. E. 210; *Service* v. *Sumpter Valley Ry. Co.*, 88 Ore. 554, 576, 171 P. 202; *Pitman* v. *Yazoo & M. V. R. Co.*, 171 Miss. 799, 810, 158 So. 547; *Minnesota* v. *Blasius*, 290 U. S. 1, 10, 54 S. Ct. 34, 78 L. Ed. 131. The finding describes the proposed jour-

[fol. 16] ney from Meriden to Fall River as not being continuous. It was suspended for a substantial time in New Haven. It was to be resumed only when the plaintiff started to board the train which would take her from New Haven to Fall River. Her journey, so far as it appears from the facts before us, was intrastate. See *New York Cent. R. Co.* v. *Mohney*, 252 U. S. 152, 157, 40 S. Ct. 287, 64 L. Ed. 502. In this very important aspect, the case at bar is distinguishable from these cases, relied upon by the defendant: *Birmingham Term. Co.* v. *Wilson*, 249 Ala. 397, 31 So. 2d, 563; *Franklin* v. *Southern Pac. Co.*, 203 Cal. 680, 265 P. 936, cert. denied, 278 U. S. 621, 49 S. Ct. 24, 73 L. Ed. 542; *Tilson* v. *Terminal R. Assn.*, 236 S.W.2d 42 (St. Louis Ct. App.) It was conceded in the *Birmingham Terminal* case (p. 399) that the plaintiff was an interstate passenger. In the *Franklin* case (p. 682) the redcap was to deliver the baggage of the plaintiff to her after she had embarked upon the train that was to carry her to Alabama. The transfer of the plaintiff in the *Tilson* case (p. 44) was much more direct than that of the plaintiff in the present case.

The trial court's conclusion that the plaintiff left her bag with the defendant's agent for safekeeping and not for transportation was a conclusion drawn from subordinate facts. Maltbie, Conn. App. Proc., p. 128. It is reasonably and logically supported by them and is not in violation of any rule or principle of law. Id. § 4, p. 7, § 96, p. 129; *Leigh* v. *Smith*, 138 Conn. 494, 496, 86 A.2d 567. It renders the defendant liable as an ordinary bailee for the actual value of the property lost. *Allen* v. *Southern Pac. Co.*, 213 P.2d 667 (Utah); *Wells* v. *Active Automobile Exchange, Inc.*, 99 Conn. 523, 527, 121 A. 883; *Murray* v. *Paramount Petroleum & Products Co.*, 101 Conn. 238, 242, 125 A. 617.

There is no error.

In this opinion Jennings and Inglis, Js., concurred.

Brown, C.J. (dissenting).

As appears by the majority opinion, the question decisive of this appeal is whether the court's conclusion that the plaintiffs' baggage "was left with the Defendant for safekeeping and not for transportation and, therefore, was not in Interstate Commerce" is supported by the subordinate facts found. I conclude that it is not and that therefore

there was error in the judgment as rendered for the named plaintiff.

These are the only material facts. The defendant was engaged in interstate commerce in the carriage of passengers for hire. The named plaintiff purchased a ticket for passage upon its trains from Meriden, by way of New Haven, both in Connecticut, to Fall River, in Massachusetts. With suitcase in hand, she boarded the defendant's train at Meriden at 11:19 a. m. and arrived at New Haven shortly after 11:30 a. m. Upon alighting there on the station platform, she surrendered her suitcase to one of the defendant's redcaps, with orders that he return it to her "at the train leaving for Fall River on Track No. 8 at 12:40 P. M." He failed to return it to her "at that time or at any other time."

In my opinion, the only reasonable conclusion which the court could reach upon these facts was that the plaintiff continued as a passenger of the defendant in interstate commerce during all of the interval between her arrival at the New Haven station and the departure therefrom of the connecting train for Fall River, and that the loss of her suitcase was incident to her status as such a passenger. *Franklin* v. *Southern Pac. Co.*, 203 Cal. 680, 265 P. 936, cert. denied, 278 U. S. 621, 49 S. Ct. 24, 73 L. Ed. 542; *Tilson* v. *Terminal R. Assn.*, 236 S. W. 2d 42, 45 (St. Louis Ct. App.); *Stopher* v. *Cincinnati Union Term. Co.*, 246 I.C.C. 41, 45; *Dayton Union Ry. Co. Tariff for Redcap Service*, 256 I.C.C. 289; *Williams* v. *Jacksonville Term. Co.*, 315 U. S. 386, 62 S. Ct. 659, 86 L. Ed. 914, 925. Accordingly, I conclude that the determination by the majority that "[h]er journey, so far as it appears from the facts before us, was intrastate" is unwarranted. It necessarily follows that the defendant's interstate tariff limits the plaintiff's right of recovery to $25. This means that there was error and that the case should be remanded to the City Court of Meriden with direction to enter judgment pursuant to § 7944 of the General Statutes, predicated upon the offer of judgment made by the defendant.

In this opinion Roberts, Jr., concurred.

[fol. 17] STATE OF CONNECTICUT

At A Supreme Court of Errors held at Hartford on the first Tuesday of October, A. D. 1952.

Present, Hon. Allyn L. Brown, Chief Justice, Hon. Newell Jennings, Hon. Raymond E. Baldwin, Hon. Ernest A. Inglis, Hon. J. Howard Roberts, Associate Judges.

MRS. GEORGE NOTHNAGLE of the City of Meriden, County of New Haven, State of Connecticut,

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, a Corporation.

On Appeal from the City Court of Meriden in New Haven County.

JUDGMENT.

This appeal by the defendant claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this Court, was allowed by the City Court of Meriden in New Haven County on the 13 day of January, A. D. 1951, and came to this Court, at its term held at Hartford, on the first Tuesday in April, A. D. 1951, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said City Court of Meriden in New Haven County there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellant her costs taxed at $ — —.

Date of judgment, November 25, 1952.

By the Court, — —, *Clerk.*

[fol. 18] [Endorsed:] #3675. The Supreme Court of Errors. Third Judicial District, Mrs. George Nothnagle vs. New York, New Haven & Hartford Railroad Company. Judgment File. Date of Judgment, November 25, 1952.

[fol. 19] STATE OF CONNECTICUT, NEW HAVEN COUNTY, SUPREME COURT OF ERRORS

I, Edward Horwitz, Clerk of the Supreme Court of Errors for New Haven County, in the State of Connecticut and keeper of the records and seal thereof, hereby certify that the within, above and foregoing is a true copy of the printed record used in the hearing before the Supreme Court of Errors of the State of Connecticut in the case of Mrs. George Nothnagle et al vs. The New York, New Haven and Hartford Railroad Company and of all the proceedings in said Supreme Court of Errors; including the rescript from said Supreme Court of Errors; the opinion of said Supreme Court of Errors; and the judgment therein; and I further certify that no further proceedings of any kind other than as noted herein have been filed in said Supreme Court of Errors in the above entitled action.

In witness whereof I hereunto set my hand and affix the seal of said Court at New Haven, in said County, this 17th day of December, A. D. 1952.

Edward Horwitz, *Clerk*.

[fol. 20] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Petitioner,

vs.

MRS. GEORGE NOTHNAGLE et al.

ORDER ALLOWING CERTIORARI—Filed March 9, 1953

The petition herein for a writ of certiorari to the Supreme Court of Errors of the State of Connecticut is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT, U.S.

Office - Supreme Court, U.S.
DEC 31 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT AND BRIEF IN SUPPORT THEREOF.

H. L. Filer,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

The New York, New Haven and Hartford Railroad Company, petitioner, respectfully prays for a writ of certiorari to review the judgment of the Supreme Court of Errors of the State of Connecticut entered November 25, 1952 in its Case No. 3675—*Mrs. George Nothnagle, et al.* v. *The New York, New Haven and Hartford Railroad Company.*

Statement of the Matter Involved

Petitioner is a corporation engaged in interstate commerce and passenger transit for hire. On October 5, 1949,

Mrs. George Nothnagle, respondent, purchased a ticket for passage upon trains operated by petitioner from Meriden, Connecticut, to Fall River, Massachusetts. That same day she boarded a train operated by petitioner at Meriden, Connecticut, at 11:19 A.M. and rode to New Haven where she arrived with her baggage shortly after 11:30 A.M. At New Haven she alighted from the train to the platform of the station owned, operated and maintained by petitioner and was approached by a Red-Cap, an employee of petitioner, who solicited her baggage. She surrendered her baggage to the Red-Cap with orders to have the baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P.M. The Red-Cap did not return the baggage to her at that time or at any other time. The baggage consisted of a suit-case containing a diamond ring, costume jewelry, two dresses, a suit, underclothing, shoes, and a silver mounted brush and comb, all of which belonged to her, and ties, shirts, pajamas, socks, shorts and handkerchiefs belonging to her husband. The baggage and its contents were reasonably worth $615. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 7 and 8)).

On October 5, 1949, petitioner had on file with the Interstate Commerce Commission a tariff entitled "New England Joint Tariff R. C. No. 3-N" stating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by Red-Caps. Paragraph 2 of this tariff stated that petitioner's liability for each piece of baggage or parcel (including its contents) would be limited to $25 unless a greater value was declared in writing by the passenger. No greater value was declared by respondent with respect to the baggage surrendered to the Red-Cap. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 8)).

Suit for loss of the baggage was brought by a writ, sum-

mons and complaint dated December 28, 1949, returnable to the City Court of Meriden on the fourth Tuesday of January 1950 (R. 2, 3). Petitioner filed an offer of judgment of $25 on September 25, 1950 (R. 3). Issue was joined by an Amended Answer dated September 26, 1950. The limitation of liability contained in petitioner's tariff was set out in this Amended Answer as a defense (R. 4). At the trial the attorneys for petitioner and respondent stipulated that all the matters alleged in the respondents' complaint were admitted, that the value of the contents of the baggage be set at $615 and that petitioner's only defense would be the application of the tariff as filed with the Interstate Commerce Commission (R. 9). The trial court, Bogdanski, J., rendered a decision for respondent for $615 (R. 4 and 5) and Judgment was entered in her favor on November 25, 1950 (R. 5 and 6). Thereafter, on January 13, 1951, petitioner appealed to the Supreme Court of Errors of the State of Connecticut. That court held there was no error in the judgment of the trial court in a decision issued November 25, 1942 (R. 14). The court split 3 to 2. The majority opinion was written by Baldwin, J. In this opinion Jennings and Inglis, Js., concurred. Brown, C. J., and Roberts, J., dissented. The majority ruled that the baggage while in petitioner's possession was not in interstate commerce, that the baggage was left for safekeeping and petitioner was liable under Connecticut law as an ordinary bailee for the actual value of the property lost.

Statement of Jurisdiction

Jurisdiction of this Court to review this case by certiorari is conferred by Section 1257 of United States Code, Title 28. This provides that final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by this Court by writ of certiorari where any title, right, privilege or immunity is specially set

up or claimed under the statutes of the United States. The statute of the United States involved is the Interstate Commerce Act, Section 1 *et seq.* of United States Code, Title 49.

The Supreme Court of Errors of the State of Connecticut is the highest court of that State in which a decision could be had in this case. Article Fifth, Sec. 1 of the Constitution of the State of Connecticut; Section 7674 of General Statutes of Connecticut, Revision of 1949.

The claim of the application of petitioner's tariff, filed with the Interstate Commerce Commission, was raised by petitioner in its Amended Answer (R. 4) and in its claims of law to the trial court (R. 9 and 10). The respondent also put the point in issue by her claims of law. (R. 9). It was considered by the trial court and rejected in his Memorandum of Decision (R. 5) and in the Conclusions contained in his Finding (R. 9). Petitioner, on its appeal to the Supreme Court of Connecticut, assigned error to his Conclusions and to his rejection of its claims of law (R. 11).

The Question Presented.

The question here presented is whether respondent, who was a passenger on petitioner's railroad on a journey from Meriden, Connecticut, to Fall River, Massachusetts, while changing trains at New Haven, Connecticut, gave her baggage to a Red-Cap and never got it back, is bound by petitioner's tariff filed with the Interstate Commerce Commission covering Red-Cap services which contains a limitation of liability of $25.

Reasons Relied On for Allowance of the Writ

1. The Court below erred in holding that respondent's baggage while in petitioner's possession at New Haven was not in interstate commerce.

2. The Court below erred in holding that on the facts respondent's journey was intrastate.

3. The Court below erred in holding that respondent's journey was suspended for a substantial time in New Haven and that suspension interrupted the interstate character of her journey.

4. The Court below erred in holding that respondent was not an interstate passenger during her stay in New Haven.

5. The Court below erred in holding that petitioner was liable to respondent as an ordinary bailee for the actual value of the property lost.

6. The Court below erred in holding that respondent was not bound by petitioner's tariff.

7. The case involves a federal question of substance which has not heretofore been determined by this Court.

Respectfully submitted,

THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,
By H. L. FILER,
54 Meadow Street, New Haven, Conn.,
Attorney for Petitioner.

December 22, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

v.

MRS. GEORGE NOTHNAGLE, ET AL,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The Opinions Below

The opinion of the Supreme Court of Errors of the State of Connecticut in this case is reported as *Mrs. George Nothnagle, et al* v. *The New York, New Haven and Hartford Railroad Company,* 139 Conn.——; 87 A. (2) ——. This decision appears at R. 14 *et seq.*

The memorandum of decision of the City Court of Meriden, the trial court, appears at R. 4 and 5, and the judgment at R. 5 and 6.

II

Statement of Jurisdiction

The jurisdiction of this Court is invoked by Section 1257 of United States Code, Title 28. The judgment of the Supreme Court of Errors of the State of Connecticut was rendered on November 25, 1952. A detailed statement in support of the jurisdiction is contained in the Petition for Writ of Certiorari at page 3.

III

Statement of the Case

The Statement of the case is set out in detail in the Petition For Writ of Certiorari at pages 1, 2 and 3.

IV

Specification of Errors to Be Urged

The Supreme Court of Errors of the State of Connecticut erred:

1. In holding that respondent's baggage while in petitioner's possession at New Haven was not in interstate commerce.
2. In holding that on the facts respondent's journey was intrastate.
3. In holding that respondent's journey was suspended for a substantial time in New Haven and that suspension interrupted the interstate character of her journey.
4. In holding that respondent was not an interstate passenger during her stay in New Haven.
5. In holding that petitioner was liable to respondent as an ordinary bailee for the actual value of the property lost.
6. In holding that respondent was not bound by petitioner's tariff.

V

ARGUMENT

1

The Decision of the Court Below Is Not Correct

There is no argument about the facts in this case. They are few in number and they are very clear. The only problem is drawing a legal conclusion from them.

It is only a short distance from Meriden, Connecticut, to Fall River, Massachusetts, by way of New Haven. Respondent intended to go all the way from Meriden to Fall River and she bought a ticket entitling her to travel the entire distance to Fall River. She started on her journey at Meriden. She had to change trains at New Haven. When she arrived at New Haven she intended to continue her journey because she told the Red-Cap "to have said baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M." (R. 7). She actually continued on her journey to Fall River because the Red-Cap did not return her baggage to her "at that time", i.e., at 12:40 P.M. (R. 7). Her journey was interrupted only because she had no other choice in the matter—she had to change trains. The interval between trains was only 1 hour and 10 minutes. There is nothing in the record to indicate that she did anything but wait in this interval. There is nothing in the record to indicate that the 12:40 train was not the first connecting train to Fall River. There is nothing in the record to indicate that she could have taken any other connecting train and did not.

Respondent had a through ticket from Meriden to Fall River. At Meriden, at New Haven at 11:30 A.M. and at New Haven at 12:40 P.M. her intention was to go to Fall River. The only facts which the lower court mentions are

that the journey from Meriden to Fall River was not continuous and that it was suspended for a substantial time in New Haven. That these facts, in and for themselves, change an interstate trip into one of an intrastate character appears a completely unreasonable conclusion.

The lower court cites no decision in support of its conclusion and in fact there is none. It seems reasonable to conclude that in other instances these same facts did not appear arguable. In *Tilson* v. *Terminal R. Ass'n of St. Louis*, 236 S.W. (2) 42 (St. Louis C. of A., Mo. 1951), and in *Birmingham Terminal Co.* v. *Wilson*, 249 Ala. 397, 31 So. (2) 563 (1947), cases with facts similar to the instant one involving passesgers' bagage lost while in the care of Red-Caps, is was conceded that the plaintiffs were interstate passengers. In *Williams* v. *Jacksonville Terminal Co.* and *Pickett* v. *Union Terminal Co.*, 315 U. S. 386, 86 L. Ed. 914 (1942), this court had before it the right of a railroad company to credit tips received by its Red-Caps against its liability for payment of minimum wages to them. Again it was conceded by both Red-Caps and their employers that the Red-Caps were engaged in interstate commerce. This decision cites the case of *Stopher* v. *Cincinnati Union Terminal Co.*, 246 I. C. C. 41 (1941), where the Interstate Commerce Commission ruled that the terminal company should file a tariff covering Red-Cap service at its station. Whether a passenger was an interstate one also was directly raised in *Washington B. & A Electric Ry. Co.* v. *Waller*, 289 F. 598 (D.C. 1923), which involved the eviction of a negro from an electric car proceeding from Annapolis to Baltimore because of his refusal to sit in the negro section of the car. He had a ticket from Annapolis to Washington but would have been obliged to change at Baltimore to a car which would take him to Washington. The Company pleaded a Maryland segregation law in de-

fense but the court ruled that he was an interstate passesger and the Maryland law did not control. In other cases, passesgers, intending ultimately to cross state lines, have attempted to break their journey and use separate lower local fares than the through interstate one. The courts uniformly have ruled that the real character of the trip must be found and that these subterfuges cannot change the journey which was actually an interstate one into an intrastate one by a break in the journey en route. *Illinois C. R. Co.* v. *Holman*, 106 Miss. 449, 64 So. 7 (1914); *Reynolds* v. *St. Louis Southwestern R. Co.*, 195 Mo. App. 215, 190 S.W. 423 (1916); *Missouri, K. & T. R. Co.* v. *Ashinger*, 63 Okla. 120, 162 P. 814 (1916).

Thus both on the facts and on the basis of somewhat analogous cases the decision of the court below that respondent was not an interstate passenger while waiting at New Haven and therefore was not bound by petitioner's tariff is not correct.

2

The Case Involves a Federal Question of Substance

Services of Red-Caps are provided by railroads at their stations for passengers universally throughout the country. The Interstate Commerce Commission specifically went into the number of Red-Caps in two investigations the results of which are reported in "*In The Matter Of Regulations Concerning Class Of Employees And Subordinate Officials To Be Included Within Term 'Employee' Under The Railway Labor Act*," 229 I. C. C. 410 (1938), and 232 I. C. C. 49 (1939). The Commission found approximately 500 railroad stations at which Red-Cap service is provided.

That the services of Red Caps generally are governed by tariffs similar to the one involved in this case is shown by such cases as *Tilson* v. *Terminal R. Ass'n of St. Louis*,

supra; Kirchoff v. *Southern Pac. Co.*, 68 F.S. 877 (D.C. Calif. 1946); *Birmingham Terminal Co.* v. *Wilson, supra.*

The statute under which these tariffs are filed is the Interstate Commerce Act. The question, therefore, is a federal one.

It was conceded by the court below that if the respondent's baggage was in interstate commerce, respondent would be bound by the tariff (R. 16). The court below ruled that because respondent had to change trains and wait in New Haven for a connecting train, her journey was intrastate and, therefore, the tariff did not apply. Aside from being very unsatisfactory because of the split in the court, the lower court's ruling means that every other time the question comes up involving a passenger who has to change trains such a tariff will not apply. The question can arise wherever Red-Caps work. The application of such tariffs to the respective rights of passengers and liabilities of railroads, therefore, is a question of great importance to all railroads and a final decision thereon by this court is a matter of general public interest.

3

The Question Has Not Heretofore Been Determined by This Court

The court below cited no decisions in support of its ruling. It made reference to the case of *New York Central R. Co.* v. *Mohney,* 252 U.S. 152, 40 S. Ct. 287, 64 L. Ed 502 (1920). This arose out of a train wreck in which plaintiff, an employee of defendant, was injured. He had been riding on an Ohio intrastate pass which exempted the defendant from liability for negligence. Plaintiff intended to continue into Pennsylvania by means of another pass he was to pick up en route. This court ruled he was not an interstate passenger and, therefore, the stipulation on the Ohio pass was invalid as contrary to Ohio public policy. The

basis of the ruling was that the only contract between plaintiff and defendant was the Ohio pass which was in terms intrastate in nature. In contrast to that case, in the present case the contract between petitioner and respondent was the through ticket from Meriden to Fall River.

This court, it is true, has decided cases involving interstate shipments of property. They were relied on by the defendant in the *Mohney* case and are discussed by this court in the course of the opinion. However, they were not used as a basis of the decision.

No other decision of this court could be found even remotely analogous.

Conclusion

The only sound conclusion from the facts is that plaintiff was an interstate passenger, that she continued in this status during her stay at New Haven and that she is bound by the limitation contained in petitioner's tariff. As the decision of the court below is not correct, and the case involves a federal question of substance which has not heretofore been determined by this court, a writ of certiorari should issue to review the judgment of the Supreme Court of Errors of the State of Connecticut.

Respectfully submitted,

THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,

Petitioner.

By H. L. FILER,
By THOMAS J. O'SULLIVAN,

54 Meadow Street,
New Haven, Conn.
Its Attorneys.

December 22, 1952.

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FILED
MAR 25 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

PETITIONER'S BRIEF

THOMAS J. O'SULLIVAN,
EDWIN H. HALL,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

BRIEF OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

I

Opinion Below

The official report of the opinion delivered by the court below, the Supreme Court of Errors of the State of Connecticut, is Mrs. George Nothnagle, et al. *vs.* The New York, New Haven and Hartford Railroad Company, 139 Conn. 278, 93 A. (2) 165.

II

Statement of Jurisdiction

Jurisdiction of this Court to review this case by certiorari is conferred by 28 U. S. C. A., Section 1257. This provides that final judgments or decrees rendered by the

highest court of a State in which a decision could be had may be reviewed by this Court by writ of certiorari where any title, right, privilege or immunity is specially set up or claimed under the statutes of the United States. The statute of the United States involved is the Interstate Commerce Act, 49 U. S. C. A., Section 1, *et seq.*, and particularly Section 20(11) thereof.

The Supreme Court of Errors of the State of Connecticut is the highest court of Connecticut in which a decision could be had in this case. Article Fifth, Sec. 1 of the Constitution of the State of Connecticut; Section 7674 of General Statutes of Connecticut, Revision of 1949.

The claim of the application of the tariff of The New York, New Haven and Hartford Railroad Company (hereinafter called the Railroad), filed with the Interstate Commerce Commission in accord with the Interstate Commerce Act, was made by the Railroad in its Amended Answer (R. 4) and in its claims of law to the trial court (R. 9 and 10). This claim was overruled by the trial court in the Conclusions contained in its Finding (R. 9). The Railroad, on its appeal to the Supreme Court of Connecticut, assigned error to the Conclusions of the trial court and to its overruling of the claim of law (R. 11).

III

Statement of the Case

The Railroad is a corporation engaged in interstate commerce and passenger transit for hire. On October 5, 1949, Mrs. George Nothnagle purchased a ticket for passage upon trains operated by the Railroad from Meriden, Connecticut, to New Haven, Connecticut, and to Fall River, Massachusetts. The same day she boarded a train operated by the Railroad at Meriden, Connecticut, at 11:19 A. M. and rode to New Haven where she arrived with her

baggage shortly after 11:30 A. M. At New Haven she alighted from the train to the platform of the station owned, operated and maintained by the Railroad and was approached by a Red-Cap, an employee of the Railroad, who solicited her baggage. She surrendered her baggage to the Red-Cap with orders to have the baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M. The Red-Cap did not return the baggage to her at that time or at any other time. The baggage consisted of a suit-case containing a diamond ring, costume jewelry, two dresses, a suit, underclothing, shoes, and a silver mounted brush and comb, all of which belonged to her, and ties, shirts, pajamas, socks, shorts and handkerchiefs belonging to her husband. The baggage and its contents were reasonably worth $615. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 7 and 8)).

On October 5, 1949, the Railroad had on file with the Interstate Commerce Commission a tariff entitled "New England Joint Tariff R. C. No. 3-N", stating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by Red-Caps. Paragraph 2 of this tariff stated that the Railroad's liability for each piece of baggage or parcel (including its contents) would be limited to $25 unless a greater value was declared in writing by the passenger. No greater value was declared by Mrs. Nothnagle with respect to the baggage surrendered to the Red-Cap. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 8)).

Suit for loss of the baggage was brought by a writ, summons and complaint dated December 28, 1949, returnable to the City Court of Meriden on the fourth Tuesday of January 1950 (R. 2, 3). The Railroad filed an offer of judgment of $25 on September 25, 1950 (R. 3). Issue was joined by an Amended Answer dated September 26, 1950.

The limitation of liability contained in the Railroad's tariff was set out in this Amended Answer as a defense (R. 4). At the trial the attorneys for the Railroad and Mrs. Nothnagle stipulated that all the matters alleged in the complaint were admitted, that the value of the contents of the baggage be set at $615 and that the Railroad's only defense would be the application of the tariff as filed with the Interstate Commerce Commission (R. 9). The trial court, Bogdanski, J., rendered a decision for Mrs. Nothnagle for $615 (R. 4 and 5) and Judgment was entered in her favor on November 25, 1950 (R. 5 and 6). Thereafter, on January 13, 1951, the Railroad appealed to the Supreme Court of Errors of the State of Connecticut (R. 6). That court held there was no error in the judgment of the trial court in a decision issued November 25, 1942 (R. 14). The court split 3 to 2. The majority opinion was written by Baldwin, J. In this opinion Jennings and Inglis, Js., concurred. Brown, C. J., and Roberts, J., dissented. The majority ruled that the baggage while in the Railroad's possession was not in interstate commerce, that the baggage was left for safekeeping and the Railroad was liable under Connecticut law as an ordinary bailee for the actual value of the property lost.

IV

Specification of Errors to Be Urged

The Supreme Court of Errors of the State of Connecticut erred:

1. In holding that the baggage while in possession of the Railroad at New Haven was not in interstate commerce.

2. In holding that on the facts Mrs. Nothnagle's journey was intrastate.

3. In holding that Mrs. Nothnagle's journey was suspended for a substantial time in New Haven.

4. In holding that Mrs. Nothnagle did not continue as a passenger of the Railroad in interstate commerce during her stay in New Haven.

V

ARGUMENT

A

The Judgment of the Supreme Court of Connecticut Was That the Baggage While in Possession of the Railroad Was Not in Interstate Commerce.

Mrs. Nothnagle carried her bag onto the train at Meriden and kept it with her until after she had alighted from the train at New Haven. There she was approached by a Red-Cap employed by the Railroad who solicited her bag. She surrendered it to him. At that time it came into possession of the Railroad (R. 7).

The Supreme Court of Connecticut said:

> "If the baggage, while in the possession of the defendant, was in interstate commerce, the limitation of liability set forth in the tariff filed with the interstate commerce commission is applicable and controls the decision of the court even though the plaintiff had no actual knowledge of the tariff" (R. 16).

The court rejected as not conclusive the fact that the Railroad was a common carrier engaged generally in interstate commerce (R. 16). It also found not conclusive the fact that Mrs. Nothnagle had purchased a through ticket from Meriden to Fall River (R. 16).

The court ruled ultimately that the bag was not in interstate commerce. Its reasoning to justify this conclusion is:

> "The finding describes the proposed journey from Meriden to Fall River as not being continuous. It was

suspended for a substantial time in New Haven. It was to be resumed only when the plaintiff started to board the train which would take her from New Haven to Fall River. Her journey, so far as it appears from the facts before us, was intrastate" (R. 16, 17).

The court thus found that the Railroad's tariff did not control and that there was no error in the judgment of the trial court.

B

The Judgment of the Supreme Court of Connecticut is Erroneous Because the Baggage While in Possession of the Railroad Was in Interstate Commerce.

The facts in this case are few and they are very clear. Nor is there any great problem in drawing legal conclusions from them.

It is only a short distance from Meriden, Connecticut, to Fall River, Massachusetts, by way of New Haven. Mrs. Nothnagle, with her ultimate destination in mind and intending to go all the way from Meriden to Fall River, bought a ticket entitling her to travel the entire distance on trains operated by the Railroad. The trip was to be made in two stages; one, from Meriden to New Haven, the other from New Haven to Fall River. The first stage was entirely within the State of Connecticut. At New Haven she would change to another train which would complete the journey to Fall River. She started on her journey at Meriden and shortly thereafter arrived at New Haven where she was approached by the Red-Cap. At that time it is obvious she intended to continue her journey. Also, before she gave the bag to the Red-Cap, she must have inquired when, and from where, the Fall River train would leave because she told him to return the bag to her at the train leaving for Fall River on Track #8 at 12:40 P. M.

(R. 7). At that time (*i. e.* 12:40 P. M.) the Red-Cap did not return the bag to her (R. 7). Thus, she must have been there at the train leaving for Fall River. Her intent to continue her journey is clear both at 11:30 A. M. when she arrived at New Haven and at 12:40 P. M. when she was to leave from New Haven. The interruption in her journey was caused by her need to change trains. There is nothing in the record to indicate that this interruption was of her choice or for her convenience or due to anything but regular train schedules or that she did anything but wait in the interval.

At all times—at Meriden at 11:19 A. M., at New Haven at 11:30 A. M. and at New Haven at 12:40 P. M.—Mrs. Nothnagle had on hand an interstate railroad to take her from Meriden to Fall River. Having purchased a through ticket, at all times, she had the right under this contract with the Railroad to go on an interstate trip. At all times, she had the intent to go on an interstate trip. The Supreme Court of Connecticut in its opinion states that the journey was not continuous and it was suspended for a substantial time in New Haven (R. 17). It was not continuous because it was to be made in two stages and it was suspended while connections were being made. If this reasoning is correct, then, whenever a journey is made to an out of state point by connecting trains, the journey loses its interstate character. The interruption here was 70 minutes. Train connections can be minutes or even hours apart. In any event, the interruption is a temporary one only. There should be no real legal significance in such a temporary interruption whether the passenger gets off one train and immediately boards another which might wait a minute or two before leaving, whether the passenger gets off one train and can see the other approaching in the distance or whether the passenger gets off one train and has to wait some time for the other to come.

That the facts that the journey from Meriden to Fall River was not continuous and that it was suspended temporarily in New Haven, in and of themselves, change what would otherwise be an interstate trip into one of an intrastate character appears a completely unreasonable conclusion.

If the ruling of the Supreme Court of Connecticut is allowed to stand it will control the hundreds of thousands of daily Red-Cap and porter services provided in railroad, air line, bus and steamship stations and terminals throughout the country.

The lower court cites no decision in support of its conclusion and, in fact, there is none. There have been a number of similar Red-Cap cases, including *Franklin* v. *Southern Pac. Co.*, 203 Cal. 680, 265 P. 936 (1928), *cert. den.* 278 U. S. 621, 73 L. Ed. 542; *Tilson* v. *Terminal R. Ass'n of St. Louis*, 236 S. W. (2) 42 (St. Louis C. of A. Mo. 1951); *Kirchoff* v. *Southern Pac. Co.*, 68 F. Supp. 877 (D. C. Calif., 1946); *Birmingham Terminal Co.* v. *Wilson*, 249 Ala. 397, 31 So. (2) 563 (1947); but the precise point involved in this case was not raised or passed upon in any of them.

Red-Cap services in general have been held to be "transportation" within the meaning of the Interstate Commerce Act, 49 U. S. C. A., Section 1, *et seq.*, and subject to regulation by the Interstate Commerce Commission. *Stopher* v. *Cincinnati Union Terminal Co.*, 246 I. C. C. 41 (1941); *Dayton Union Railway Co. Tariff for Red Cap Services*, 256 I. C. C. 289 (1943); *Red Cap Service, Cincinnati, Columbus, Indianapolis*, 277 I. C. C. 427 (1950). The *Stopher* case was cited in *Williams* v. *Jacksonville Terminal Co.* and *Pickett* v. *Union Terminal Co.*, 315 U. S. 386, 86 L. Ed. 914 (1942), wherein this court had before it the question of payment of minimum wages to Red-Caps under the Fair Labor Standards Act, 29 U. S. C. A., Section 201, *et seq.*

However, it was conceded that Red-Caps were engaged in interstate commerce.

There have been decisions that changing trains en route does not make an otherwise interstate journey into one of intrastate character. These involve the segregation laws, so-called. *Washington B. & A. Electric Ry. Co.* v. *Walker*, 289 F. 598 (D. C. 1923); *Lee* v. *Commonwealth*, 189 Va. 890, 54 S. E. (2) 888 (1949).

In other cases passengers, intending ultimately to cross state lines, have attempted to break their journey and use separate lower local fares than the through interstate one. The courts uniformly have ruled that the real character of the trip must be found and that these subterfuges cannot change the journey which was actually an interstate one into an intrastate one by a break in the journey en route. *Illinois C. R. Co.* v. *Holman*, 106 Miss. 449, 64 So. 7 (1914); *Reynolds* v. *St. Louis Southwestern R. Co.*, 195 Mo. App. 215, 190 S. W. 423 (1916); *Missouri K. & T. R. Co.* v. *Ashinger*, 63 Okla. 120, 162 P. 814 (1916).

These and other cases have been collected in the annotation entitled, *Breaking continuity of passage or shipment as affecting its interstate character*, 60 A. L. R. 1465 (1929), 155 A. L. R. 936 (1945).

In short, based on the facts, and the available law, the lower court's judgment is erroneous because the baggage while in possession of the Railroad was in interstate commerce.

VI

Conclusion

The only reasonable conclusion from the facts and law is that Mrs. Nothnagle was an interstate passenger, that she continued in this status during her stay in New Haven.

As the judgment of the Supreme Court of Errors of Connecticut is not correct it should be reversed.

Respectfully submitted,

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March 19, 1953.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PETITIONER

v.

MRS. GEORGE NOTHNAGLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION, AMICUS CURIAE

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STATEMENT

This brief is filed by the Interstate Commerce Commission at the Court's request to express its views on the questions presented by the writ of certiorari granted herein. The facts show:

Respondent, Mrs. George Nothnagle, on October 5, 1949 purchased a ticket for passage upon the trains of petitioner from Meriden, Conn., to New Haven, Conn., and to Fall River, Massachusetts (R. 2). The journey required that she change from one train to another train of petitioner at New Haven, Connecticut. The passage from

Meriden to New Haven was entirely within the State of Connecticut. She arrived at New Haven with her baggage shortly after 11:30 A. M. (R. 7). Upon alighting from the train a redcap, an employee of petitioner, solicited her baggage (R. 7). She surrendered her baggage consisting of a suitcase and its contents to the redcap with orders to have the baggage returned to her at the train leaving for Fall River on Track No. 8 at 12:40 P. M. (R. 7). This was the first train leaving for Fall River after her arrival in New Haven. The baggage was never returned to her (R. 7). The parties have stipulated that the baggage was lost as the result of negligence of the petitioner (R. 8).

Mrs. Nothnagle brought suit against the Railroad in the City Court of Meriden, to recover the value of the baggage (R. 2). Petitioner filed an offer of judgment of $25, contending that that was the limit of its liability under its interstate tariff entitled "New England Joint Tariff R. C. No. 3-N," filed with the Interstate Commerce Commission (R. 4). At the trial the parties stipulated that all the matters alleged in the respondent's complaint were admitted and that petitioner's only defense would be the application of the tariff filed with the Commission (R. 9). Judgment in favor of respondent in the amount of $615, the stipulated value of the baggage, plus costs, was entered September 26, 1950 (R. 4-5).

On November 25, 1952, the Supreme Court of Errors, State of Connecticut, affirmed the judgment of the lower court (R. 14), and on March 9, 1953, this Court granted certiorari.

The said tariff of petitioner provided charges for the handling of hand baggage and other personal effects of passengers by station porters ("red caps") and stated that the railroad would not accept a greater liability than $25 per bag or parcel, or the actual value if less than $25, unless a greater value is declared in writing by the passenger. It provided that additional charges at the rate of 10 cents per bag or parcel will be made for each $100 or fraction thereof above $25 so declared. The tariff further stated that a bag or parcel declared by the passenger to have a value in excess of $500 would not be accepted for handling by red caps.[1]

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[1] The pertinent provisions of tariff R. C. No. 3–N on file with the Interstate Commerce Commission read as follows:

"RULES, REGULATIONS AND CHARGES

"1—Carriers parties to this tariff do not undertake to furnish Red Cap Service generally or at all stations on their lines, or at all times at stations where such service is furnished. When and where and to the extent that Red Cap Service may be furnished by the carriers for handling the hand baggage and other personal effects of passengers, the carriers' charge for such service will be at the rate of *Fifteen (15) Cents* for each piece so handled, except that in the handling of hand baggage and other personal effects for parties the charge of fifteen (15) cents per piece will apply up to and including ten pieces, and the charge for *more than*

The City Court of Meriden found that the petitioner did not declare in writing any value of her baggage (R. 8); that there was no evidence offered that respondent paid or intended to pay anything of value for handling said baggage (R. 8). The court further found that the red cap gave the respondent no ticket or check in exchange for the baggage, nor any other item with printing or any statement of limitation of liability upon it, and that respondent had no knowledge of the said tariff (R. 8). The court further found that there were no signs posted at any point calling attention of passengers to the fact that the petitioner attempted to limit its liability by the use of the said tariff (R. 8). There was no claim that the redcap orally informed the respondent of any limitation of lia-

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ten pieces will be at the rate of *One Dollar and Fifty Cents ($1.50) per baggage truck load.*

"2—Carriers will not accept a greater liability than Twenty-five (25) Dollars per bag or parcel, or the actual value of the bag or parcel if said actual value is less than Twenty-five (25) Dollars, for each bag or parcel handled by Red Caps under the provisions of this tariff, unless a greater value is declared in writing by the passenger. If a greater value is so declared in writing by the passenger, an additional charge of *Ten (10) Cents* per bag or parcel will be made for each One Hundred (100) Dollars or fraction thereof above Twenty-five (25) Dollars so declared. Any bag or parcel which is declared by the passenger to have a *value in excess of Five Hundred (500) Dollars will not be accepted for handling* by Red Caps under the provisions of this tariff. Bag or parcel as used in this tariff means a bag or parcel including its contents."

bility or of any limitation of the value of baggage that would be handled.

Two questions are raised:

1. Was the service of the red cap an interstate service governed by Federal Law, or was it an intrastate service governed by the law of the State of Connecticut?

We submit that the redcap service was a part of the carrier's interstate service and was governed by Federal law.

2. Was the carrier's liability limited or excluded by the tariff?

We submit that under the facts of this case the carrier's liability was not limited or excluded by the tariff and that the carrier is liable for the full value of the baggage.

INTERSTATE OR INTRASTATE CHARACTER OF THE SERVICE

Division 3 of the Interstate Commerce Commission, in Ex Parte 72 (Sub. No. 1), *Regulations Concerning Employees Under the Railway Labor Act,* decided September 29, 1938, 229 I. C. C. 410, as to terminals in cities having a population of more than 100,000 population, and on March 29, 1939, in 232 I. C. C. 49, as to terminals in cities having a population of 100,000 or less,[2] held that red caps were employees of the railroads within the meaning of Section 1 of the Railway

[2] The 1940 census figures show the population of Meriden to be 39,494; for 1950 its population was 44,088.

Labor Act, 45 U. S. C. § 151. This issue was carried through several court proceedings, culminating in the decision of this Court in *Williams et al. v. Jacksonville Terminal Co.*, 315 U. S. 386, in which the Court applied the Railway Labor Act to the employer-red cap relationship. One of the contentions of the carriers considered by the Court was that since the charges for red cap service were not filed with the Commission, the treating of tips as compensation for red cap service would be in effect a charge by the terminals for a transportation service, and would constitute a violation of Section 6 (7) of the Interstate Commerce Act. The carriers further contended that this would result in the giving of special rates, in violation of section 2 of that Act because by the carrier's regulations the indigent receive red cap service without charge. This Court stated that "Neither contention, if true, would avail petitioner." P. 408). The Terminal Company admitted by stipulation that the red caps were its employees and that they were engaged in interstate commerce (page 391).

While the *Williams Case* was wending its way through the courts, the Commission (Division 3), on June 25, 1941, decided *Stopher v. Cincinnati Union Term. Co., Inc.*, 246 I. C. C. 41, holding that the service of red caps at the defendant-carrier's station in Cincinnati, insofar as it relates to interstate or foreign commerce, and

defendant's charge for that service, are subject to regulation under the Interstate Commerce Act. An order was entered requiring the defendant-carrier to file with the Commission a tariff containing charges for this service. The Commission pointed out that this decision would serve as a precedent for red cap service at other stations, even though the order would relate only to those charges of the defendant at Cincinnati. This decision of the Commission was noted by this Court in a footnote in its opinion in *Williams* v. *Terminal Co., supra,* page 408.

The Commission's report in *Stopher* v. *Cincinnati Union Term. Co., Inc.; supra,* contains a full description of the services rendered by red caps at that terminal and discusses the application of the Interstate Commerce Act to those services. The services there described include the services rendered the respondent in the instant case. At the Cincinnati terminal the red caps were furnished serially numbered tags which were attached to each piece of baggage, the detachable stub of which was given to the passenger as an identification token. Printed upon this identification stub was certain information, including the following "The Cincinnati Union Terminal Co. limits its liability to $25 on any article handled by Red Cap." (P. 42.) No similar identification stub or token was given to the respondent when her baggage was surrendered to the red cap at New Haven.

The Commission's decision in the *Stopher Case, supra,* contains a full discussion of its reasons for holding that red cap service, insofar as it relates to interstate or foreign commerce, is subject to the Interstate Commerce Act. (See pages 44–46 of 246 I. C. C.)

In the case under consideration, respondents had purchased from the petitioner a ticket for transportation from Meriden, Conn., to New Haven in the same state and to Fall River, Mass. In our view the red cap service was either a terminal service in connection with a continuous through interstate journey from Meriden to Fall River, interrupted only because of the schedules maintained, or else it was a service in connection with the second segment of the journey from New Haven to Fall River, which unquestionably was interstate, and for which the respondent had purchased a ticket. It will be recalled that the red cap was instructed to deliver the baggage to the train leaving for Fall River on Track No. 8 at 12:40 P. M. (R. 7). It is true, as stated by the Supreme Court of Errors, such matters as the terms of a ticket or bill of lading are merely evidence of the interstate character of the movement (R. 16), but we submit that where a passenger is traveling on a through interstate ticket, that is presumptive proof of the character of the journey and is conclusive in the absence of proof to the contrary. This record contains no proof to the contrary.

By all proper standards, respondent was an interstate passenger when she arrived at New Haven. As stated by this Court in *Sprout* v. *South Bend*, 277 U. S. 163, 168:

> "The actual facts govern. For this purpose, the destination intended by the passenger when he begins his journey and known to the carrier, determines the character of the commerce. Compare, *Philadelphia & Reading Ry. Co.* v. *Hancock*, 253 U. S. 284; *Baltimore & Ohio R. R. Co.* v. *Settle*, 260 U. S. 166, 171."

(See also *Galveston, etc. Ry. Co.* v. *Woodbury*, 254 U. S. 357.)

The question whether the terminal services in the handling of baggage of interstate passengers is an interstate service was considered in the much litigated case of *Hartzberg* v. *New York Cent. R. Co.*, 41 N. Y. S. 2d 345; affirmed 51 N. Y. S. 2d 741; appeal denied, 52 N. Y. S. 2d 580; affirmed Appellate Division, 295 N. Y. 703; 65 N. E. 2d 337; certiorari denied, 328 U. S. 849. After quoting the language of section 1 (3) as including, "the receipt, delivery * * * storage and handling of property transported," the Supreme Court of New York stated (41 N. Y. S. 2d 349):

> "[4–6] It is stated in *Pennsylvania R. Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, 175, 56 S. Ct. 687, 689, 80 L. Ed. 1130, that for the purpose of determining the applicability of the Interstate Commerce Act, interstate transportation begins

* * * when the merchandise has been placed in the possession of a carrier.' See, also, 5 Eliott on Railroads, 3rd Ed., § 2512, pp. 322, 323, 324; 1 Hutchinson on Carriers, 3rd Ed., § 113, p. 110; *Missouri Pac. R. Co.* v. *McFadden,* 154 U. S. 155, 160, 161, 14 S. Ct. 990, 38 L. Ed. 944; *Saffa* v. *Illinois Cent. Ry. Co.,* 218 Mo. App. 502, 279 S. W. 223, 226. The fact that delivery of merchandise or baggage to the carrier precedes the purchase of the ticket for interstate transportation, or that the loss occurs prior to such purchase, does not alter the interstate character of the transportation. *Williams* v. *Central R. Co. of New Jersey,* 93 App. Div. 582, 88 N. Y. S. 434, affirmed 183 N. Y. 518, 76 N. E. 1116; 4 Michie on Carriers [1915], §§ 3348, 3450. Hutchinson on Carriers, Vol. 3, 3rd Ed., § 1281, p. 1524, states: 'The passenger has the right to deliver his baggage to the carrier such time before the starting of the train upon which he intends to take passage as may be reasonably necessary for obtaining a ticket and checking the baggage. From the time delivery is thus made, the carrier will be responsible for its safety as a common carrier.' *Once interstate transportation has begun, it continues and its applicable rules will govern liability for loss of baggage at an intermediate, albeit a wholly intrastate, point of interruption.* (*Franklin* v. *Southern Pac. Co.,* 203 Cal. 680, 265 P. 936, 59 A. L. R. 118, certiorari denied 278 U. S. 621, 49 S. Ct. 24, 73 L. Ed. 542; *Swift* &

Co. v. *United States,* 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518) and after arrival at a wholly intrastate point of destination. *Cleveland C. C. & St. L. Ry. Co.* v. *Dettlebach,* 239 U. S. 588, 36 S. Ct. 177, 60 L. Ed. 453; *Southern R. Co.* v. *Prescott,* 240 U. S. 632, 36 S. Ct. 469, 60 L. Ed. 836. [Emphasis added.]

The Court concluded that, "plaintiffs' trunk was in interstate transportation from the time of its delivery to defendant's baggage room" (p. 350).

We submit that the service of the red cap in the case under consideration was a service in interstate commerce.

If the conclusion that the service in question is subject to the Interstate Commerce Act, is correct, it follows that the liability of the carrier is determinable under the Interstate Commerce Act rather than under the laws of the State of Connecticut. *Adams Express Co.* v. *Croninger,* 226 U. S. 491, 505, 506; *Southeastern Express Co.* v. *Pastime Amusement Co.,* 299 U. S. 28, and cases cited therein.

STATUTORY PROVISIONS IN RESPECT TO CARRIER'S LIABILITY FOR PASSENGER'S BAGGAGE

The limitation of liability of carriers for an interstate passenger's baggage is covered by the Carmack Amendment to the Interstate Commerce Act [49 U. S. C., Section 20 (11)].

Prior to the Carmack Amendment the liability of railroads for the loss of or damage to prop-

erty, including baggage, was governed either by the general common law as interpreted by the Federal courts, or by the laws of the various states. *Boston & Maine Railroad* v. *Hooker,* 233 U. S. 97, 109–110; *Adams Express Co.* v. *Croninger,* 226 U. S. 491, 500–501. By adoption of the Carmack Amendment (June 29, 1906), Congress provided that the carrier receiving property for transportation shall be liable for any loss or damage to such property caused by it or by any carrier to which such property might be delivered, or over whose line such property might pass, and declared that no contract or rule should exempt such carrier from the liability thereby imposed. This amendment was construed as superseding all state law on the subject. *Adams Express Co.* v. *Croninger, supra,* p. 507. Despite the original Carmack Amendment prohibition against limitation of liability, it was regarded as in conformity with the common law and with the Interstate Commerce Act for railroads to publish rates dependent upon the actual value of the goods, declared by the shipper, and this Court held that a statement of a low value for purposes of obtaining a lower rate estopped the shipper from claiming more than a declared value in the event of loss or damage to the shipper. *Kansas City Southern Ry. Co.* v. *Carl,* 227 U. S. 639, 651.

In most of the cases so holding, there was a printed statement in a bill of lading or in a package, check or ticket calling attention to the

limitation, but the doctrine appears to have been broadened and applied so as to hold the shipper with knowledge of the tariffs in the interest of obtaining uniformity of rates to all shippers. *Adams Express Co.* v. *Croninger, supra; Kansas City Southern Ry. Co.* v. *Carl, supra; Boston & Maine Railroad* v. *Hooker, supra.* In the last case, this Court stated (p. 120) that "The effect of the filing gives the regulation as to baggage the force of a contract determining 'Baggage liability'." See also, *Atchison, T. & S. F. Ry. Co.* v. *Robinson,* 233 U. S. 173, 180.

Because of dissatisfaction with the fact that these actual value declarations effected limitations of liability and hardship in that the shippers did not in fact know of the tariff rates varying with the value of the goods, Congress passed the first Cummins Amendment of March 4, 1915, 38 Stat. L. 1196, wherein the section was amended by adding more restrictive words including the imposition of full liability as follows:

> "notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void."

Immediately following the above quoted language, there was added, however, a proviso, reading as follows:

> "*Provided, however,* That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules."

This amendment also prohibited a carrier from fixing a period for giving notice of claims shorter than 90 days, for the filing of claims shorter than 4 months, and for the institution of suits shorter than 2 years. Shortly thereafter the Commission had occasion to construe the first Cummins Amendment, for in its report of May 7, 1915, *In Re Cummins Amendment,* 33 I. C. C. 682, in answer to the question as to whether the terms of the Cummins Amendment applied to the transportation of baggage, the Commission, at page 696, said:

> "This must apparently be answered in the affirmative. Transportation of baggage is a part of the contract of transportation

of the passenger. The carriers have always limited their liability for loss of or damage to baggage. The baggage check is the carrier's receipt for the baggage. The conditions attached to the carrier's liability are stated in the fare schedules and on passage tickets of contract form."

As a result of the Commission's construction of the first Cummins Amendment, the second Cummins Amendment was enacted on August 9, 1916, 39 Stat. L. 441, 442, providing that the requirements of the Act respecting liability for full actual loss, damage or injury, notwithstanding any limitation of liability, recovery or representation, agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply to baggage carried on passenger trains, etc.

The second Cummins Amendment eliminated the "hidden from view" proviso quoted at page 14 hereof, and in lieu thereof inserted the following:

> "*Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, *shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers;* second, to property, except ordinary livestock, received for transportation

concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation." [Emphasis added.]

In recommending adoption of this proviso, the Senate Committee on Interstate Commerce stated in its report (p. 2):

> "The construction put upon the [former] proviso by the Interstate Commerce Commission has resulted in some vexatious requirements insisted upon by carriers and

> in some injustice. For instance, it has been held by the commission that under the proviso the carrier may compel the shipper to state the value of the goods tendered for shipment and that if the true value is not stated the shipper is liable to criminal prosecution under section 10 of the act to regulate commerce. The committee does not agree with the commission in the interpretation so placed upon the proviso, but there is no way in which to remedy the matter except to make the intent of Congress so clear that it is impossible to misunderstand it. Further, the commission has held that baggage carried on passenger trains upon the ticket of a passenger is within the terms of the law. Whether this construction is correct or incorrect, it is palpable that baggage so transported on a passenger fare ought not to be subject to the rule which controls ordinary freight, and in the bill now reported it is excepted in express terms." *Report No. 394, 64th Congress, 1st Session.*

Similar remarks were made in its reports by the House Committee on Interstate Commerce.

Under the proviso of the second Cummins Amendment, carriers can limit their liability by special contract. The limitations set up by such contracts, however, must be fair and reasonable and based on sufficient consideration. Value has long been recognized as a legitimate element in rate making. A carrier may set a certain limit

for liability for loss or damage to property valued up to a stipulated amount, but since the passenger may hold the carrier to its common law responsibility up to the actual value of any property transported, the carrier must also make provision therefor by providing higher rates to take care of property of greater value. The lower valuation gives the passenger less protection in consideration for the lower rate. In other words, the rates are commensurate with the risk involved, dependent upon the valuation placed by the passenger. In reality, therefore, it is a contract founded upon the value of the property entrusted to the carrier and not a limitation of liability. This Court in *Kansas City S. R. Co.* v. *Carl*, (1913) 227 U. S. 639, stated, page 650:

> "* * * A declared value by the shipper for the purpose of determining the applicable rate, when the rates are based upon valuation, is not an exemption from any part of its statutory or common-law liability. The right of the carrier to base rates upon value has been always regarded as just and reasonable. The principle that the compensation should bear a reasonable relation to the risk and responsibility assumed is the settled rule of the common law. * * * In the leading case of *Hart* v. *Pennsylvania R. Co.*, 112 U. S. 331, the right of the carrier to adjust the rate to the valuation which the shipper places upon the

> thing to be transported is the very basis upon which a limitation of liability in case of loss or damage is rested. This is an administrative principle in rate-making recognized as reasonable by the Interstate Commerce Commission, and is the basis upon which many tariffs filed with the Commission are made. *Matter of Released Rates*, 13 Inters. Com. Rep. 550."

In view of the statutory provision above cited, carriers are required to publish and file with the Commission all rates and regulations which limit their liability on baggage, the passenger being given the choice of rates depending on valuation. Tariffs duly published and filed with the Commission constitute notice to the public of the rate properly assessable, although the shipper may have no actual knowledge thereof. *Gulf, Colorado and Santa Fe Rwy.* v. *Hefley*, 158 U. S. 98; *Texas and Pac. Railway* v. *Mugg*, 202 U. S. 242. Whether or not a regulation so filed limiting the carrier's liability on baggage is binding on passengers who had no knowledge or notice thereof, either actually or impliedly, by way of receipt or check for the baggage showing the terms and conditions under which the carrier limits its responsibility, is the question to be determined in this case. The answer is dependent upon the nature of control exerted by the carrier over the baggage in question.

CARRIER'S RESPONSIBILITY WHERE CHECKS OR RECEIPTS ARE ISSUED FOR BAGGAGE

In instances where checks or receipts for baggage are issued by the carrier, the cases hold that the passenger is bound by the tariff of the carrier limiting its liability, even though the passenger claims to have no knowledge thereof. *Galveston, H. & S. A. R. Company* v. *Woodbury,* 254 U. S. 357; *New York Central R. Co.* v. *Beaham,* 242 U. S. 148; *Boston and Maine R. R.* v. *Hooker,* 233 U. S. 97; *Tennessee Coach Company* v. *Carter,* 182 S. W. (2d) 121; *Allen* v. *Southern Pac. Company,* 213 P. (2d) 667; *Campbell* v. *Tri-State Transit Company,* 17 So. (2d) 327; *Argo* v. *S. E. Greyhound Lines,* 33 S. E. (2d) 730; *Nashville, C. & St. L. Ry.* v. *Ham,* 50 S. E. (2d) 831.

In *Galveston, H. & S. A. R. Company* v. *Woodbury, supra,* it appeared that the plaintiff was not told when she purchased her ticket or when she checked her trunk that there was any limitation on the amount of the carrier's liability. The testimony did not indicate whether the ticket purchased contained notice of any such limitation. The defense was that the company was not liable for more than $100 since it had filed and published a tariff limiting the liability to that amount, unless the passenger declared a higher value and paid excess charges, which Mrs. Woodbury had not done. The Court concluded that the carrier and passenger were bound by the provisions of the published tariff.

The case of *New York Central R. Co.* v. *Beaham, supra,* involved a passenger who had purchased a railroad ticket, presented it at the baggage department and received a check for her trunk. The face of the check read, "See conditions on back. Value not stated." On the back, this was printed:

> "Notice to Passengers. Baggage consists of a passenger's personal wearing apparel and liability is limited to $100 (except, a greater or less amount is provided in tariffs) on full fare ticket, unless a greater value is declared by owner at time of checking and payment is made therefor."

When the trunk was lost the railroad company admitted responsibility for $100 and claimed exemption from any larger recovery because of the limitation specified in the ticket; also because the same limitations were imposed in its tariff schedules on file with the Commission. Although the lower court had affirmed a judgment for $1,771.52, this Court found that the acceptance and use of the ticket sufficed to establish an agreement *prima facie* valid which limited the carrier's liability. It further stated that the mere failure of the passenger to read the matter printed on the ticket could not overcome the presumption of assent.

In all the above-cited cases receipts or checks were given for the baggage. Such checks provide visible means of directing the passenger's atten-

tion to the limitation of liability assumed by the carrier. Normally, the conditions under which the carrier accepts the baggage are printed on such baggage receipts or checks and thus the passenger is deemed to have been put on notice, actually or impliedly, of the extent of the carrier's liability in the event of loss or damage to his baggage.

In *Patton* v. *Pennsylvania Greyhound Lines*, 60 N. E. (2d) 945, the court held:

> "We therefore conclude that, under certain circumstances, there may be a limitation of baggage liability under the Interstate Commerce Act for baggage carried on motor buses as well as on railroad trains or boats.
>
> And in connection with the facts in this case, we determine that the 'certain circumstances' heretofore mentioned have been fully met by * * * (2) the *notice to the passenger of such a baggage limitation, printed on his baggage receipt* as well as on his passenger ticket * * *." [Emphasis supplied.]

The rule applicable is stated in 10 Am. Jur., Carriers, Section 1745, page 452:

> "It is well settled that in order to charge a passenger with notice of stipulations limiting liability, actual or implied knowledge thereof must be shown, as the limitations can only arise by virtue of contract, express or implied. This knowledge must

> have been acquired at the time of the purchase of the ticket of transportation, or at least prior to entering upon the journey. It has been held that in order to charge the passenger with notice, the provisions in the ticket should be specifically called to his attention, or else presented to the general public in such a manner as to raise a presumption of knowledge thereof in the passenger."

In Section 1747, 10 Am. Jur., page 453, it is stated that the carrier must show that the passengers either expressly or impliedly agreed to the limitation.

RESPONSIBILITY OF CARRIER FOR UNCHECKED HAND BAGGAGE

Even before the passage of the Interstate Commerce Act, decisions of the courts indicate that it was the rule that the passenger should be notified in some manner of the basis upon which the transportation of baggage was assumed by the carrier. This is manifest from the opinion in *Railroad Company* v. *Fraloff*, (1879), 100 U. S. 24, 27, in which this Court affirmed an award of $10,000 to a passenger for rare and valuable laces included in her baggage, which had been lost by the railroad. It is to be noted that at that time the carrier had no rule in effect limiting its liability as to baggage. The Court stated:

"* * * It is undoubtedly competent for carriers of passengers, by specific regulations, *distinctly brought to the knowledge of the passenger,* which are reasonable in their character and not inconsistent with any statute or their duties to the public, to protect themselves against liability, as insurers, for baggage exceeding a fixed amount in value, except upon additional compensation, proportioned to the risk. And in order that such regulations may be practically effective, and the carrier advised of the full extent of its responsibility, and, consequently, of the degree of precaution necessary upon its part, it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value; and if the value thus disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation, the carrier, at its option, can make such additional charge as the risk fairly justifies." [Emphasis supplied.]

The statute makes no provision for the legal obligation of carriers on unchecked baggage, and, therefore, the common law responsibility of the carrier attaches. On this point the Commission, *In The Matter of Released Rates,* 13 I. C. C. 550, stated at page 552:

"In the absence of express stipulation, the liability of a common carrier is not lim-

> ited to loss occasioned by its negligence or other misconduct. The law has cast upon it an extraordinary responsibility; it is to a large extent an insurer of the goods entrusted to it for carriage. The rule, roughly stated, is that a common carrier is liable for all losses not occasioned by the Act of God or the public enemy * * *. We are of opinion, in short, that in the absence of agreement or notice, the carrier's liability is governed by the ordinary common-law rule."

At common law, the liability of carriers has a dual aspect—the liability practically as an insurer, and its liability for negligence on the part of itself or its servants. (5 R. C. L., p. 187, Section 803.)

Where no check or receipt is issued, the element of implied knowledge of the carrier's regulations providing for limitation of liability cannot be imputed to the passenger. Under such circumstances, the measure of responsibility assumed by the carrier for the handling of hand baggage is contingent upon the degree of control exercised over it by the carrier or its employees.[3] The general principles which apply and the nature of the carrier's responsibility as to hand

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[3] A very interesting discussion of the historical background for present-day statutory law concerning a carrier's liability with regard to a passenger's baggage is contained in *Borden v. New York Cent. R. Co.*, 162 N. Y. Supp. 1099.

baggage is described in the following statement in 5 R. C. L., Section 795, page 176:

> "With regard to hand baggage, the question of the duty and liability of the carrier seems ordinarily to depend upon who has the custody or control of the baggage. If the passenger has entire control and custody to the exclusion of the carrier, then the carrier cannot be held as an insurer, and will not be liable at all, unless guilty of negligence which results in its loss or damage, in the absence of contributory negligence on the part of the passenger. The element of the degree of control respectively exercised by the passenger and the carrier enters largely into the decisions in the American cases; and the degree of liability varies with the degree of possession. So when a passenger delivers his suit case to the agent of the carrier for the purpose of having it carried on the conveyance in accordance with the custom of the carrier, it does not, necessarily, become an insurer thereof. Its possession is that of a bailee, and the law of bailments measures its obligation to the plaintiff. Whether it is a bailee for hire performing a service incidental to carriage as a passenger with the obligation of ordinary care, or a gratuitous bailee with the obligation of slight care, the loss of any or all of the property so intrusted to it raises a presumption of negligence which in the absence of explanation makes the carrier liable."

In the following instances, the passenger's baggage was unchecked but was surrendered to and placed in the exclusive possession and control of the carrier. Accordingly, the carriers were held responsible for the full value of the lost baggage. *Sayles* v. *Interstate Buses Corporation,* 66 N. Y. S. (2d) 377; *Franklin* v. *So. Pac. Company,* 265 Pac. 936, cert. den. sub nom., 278 U. S. 621; *Sambur* v. *Short Line System of Hudson Transit Lines,* 112 N. Y. S. (2d) 514; *Santa Fe Trail Transp. Co.* v. *Newlon,* 159 P. (2d) 713; *Hasbrouck* v. *New York Central and H. R. R. Co.,* 95 N. E. 808; *Atlantic Coast Line R. Co.* v. *Barksdale,* 124 S. E. 362; *Nashville, C. & St. L. R. Co.* v. *Lillie,* 78 S. W. 1055; *Holmes* v. *North German Lloyd S. S. Company,* 77 N. E. 21.

In *Sayles* v. *Interstate Buses Corporation, supra,* the passenger boarded a bus on an interstate journey. Although the passenger did not offer her bag to the driver who was standing at the door of the bus, he took it from her, but gave her no check or receipt. At destination the bag was missing and she sued for full value of the bag and contents, alleging a value of $300. The defense was that the liability of the defendant under rates duly filed with the Interstate Commerce Commission was limited to $25. In determining whether the carrier had by its duly filed rates limited its liability under the circumstances of this case, the court considered printed

notices posted in the depot of the carrier, which stated:

> "Baggage will be *checked* and transported subject to provisions of tariffs lawfully in effect. Tariffs include the following provisions:
>
> "Free Baggage Allowance
>
> "For each adult ticket *you may check,* without additional charge, baggage not exceeding $25.00 in Value and 150 Pounds in Weight
>
> * * * * *
>
> "Carrier's liability in the Event of Loss or Damage Will Not Exceed $25.00 for one or more pieces of baggage *checked* on an adult ticket unless * * *
>
> * * * * *
>
> "Unchecked Baggage
>
> "Carrier will not accept any liability for baggage or other property not checked. Such baggage is the sole responsibility of the passenger."

And again in its time table, it has the following:

> "Baggage Liability—This company will not be responsible for Baggage unless *properly checked* at the time passenger boards coach. Liability limited to $25.00." [Emphasis in original.]

The court construed the language above as indicating that the carrier interpreted the limita-

tion contained in its filed tariff as applicable only to checked baggage. In this case, as the passenger did not check her baggage, the court concluded that the common law rule of responsibility applied and held the carrier, in assuming full custody and control of the baggage, to be a bailee liable for its negligence in the loss of the baggage.

In the case of *Franklin* v. *So. Pac. Co., supra,* the court was dealing with red cap service wherein a tariff regulation was published with the Interstate Commerce Commission as follows:

> "* * * Where red cap porter service is provided, hand baggage will be handled without charge by red cap porters to and from trains of Southern Pacific Company. Liability upon hand baggage handled by red cap porters will be limited to $25."

It was held in this case that the tariff regulation, as published, did not give a choice of rates and was not like the regulations filed with the Commission as to checking baggage which did give such a choice. The question then was whether there was any difference in this respect between hand baggage and checked baggage in a case where no graduated scale of valuation is allowed. The court then observed:

> "* * * We can think of no reason why there should be any difference between baggage in the custody of a porter as a servant

of the carrier, and lost through his negligence, and baggage in the custody of a baggageman, likewise a servant of the carrier, and lost through his negligence. It seems clear on principle that the case before us is the same as though the baggage had been tendered for checking and lost in the process of checking or the shipper had been denied the right to secure full protection and had been given no alternative but to accept the limited valuation against negligence placed thereon by the carrier, which, as above shown, is illegal from its inception. This is not a case of joint control with the passenger nor a case where the passenger's conduct or negligence in any way contributed to the loss. It is a clear case of loss by negligence where the control was exclusively in the carrier, who had allowed no opportunity to the shipper to secure better protection from loss or damage."

In *Sambur* v. *Short Line System of Hudson Transit Lines, supra,* two bags were left near the bus pursuant to direction of defendant's driver, to be placed in the baggage compartment of the bus located under the floor. No check, token or mark was issued or employed by the defendant to verify plaintiff's baggage. Defendant contended that its liability was limited to the sum of $50 ($25 for each bag) under federal regulations governing interstate transportation by common carriers.

The court concluded that the passenger's baggage was not "checked" within the meaning of the baggage regulations and that, therefore, plaintiff was entitled to recover full value of his loss.

In *Santa Fe Trail Transp. Co.* v. *Newlon, supra,* plaintiff secured passage on defendant's bus for an interstate journey and did not check her hand baggage because she wanted to retain its custody during the journey. Defendant's driver required plaintiff to deposit the bag with him before he would permit her to enter the bus. When she reached her destination, the bag could not be found. Defendant argued that, under the provisions of the Interstate Commerce Act and its tariff in force and effect at the time, the amount of plaintiff's recovery for the loss of her bag could not exceed the sum of $25.00. The court ruled that neither the Interstate Commerce Act nor the carrier's tariff was applicable to unchecked baggage and stated at page 715:

> "If the defendant desired the tariff to apply to unchecked baggage of a passenger, it was unnecessary to use clear and unambiguous language in its provisions. Having failed to so do, and having interfered with plaintiff's admitted right to take her hand baggage into the bus, and assumed exclusive control of her baggage, the defendant should be held liable."

In *Hasbrouck* v. *New York Central and H. R. R. Co., supra,* the question there was likewise

one of negligence as a bailee in the manner in which a porter handled the hand baggage of a passenger. The court held that a provision on a passenger ticket that the company assumes no risk over $100, except by special contract, applied only to baggage regularly checked and not to hand baggage retained in possession of the passenger, except temporarily in getting on and off the train. Upon the particular facts of this case, the court held the relationship of bailor and bailee was established, and that the carrier was liable for the jewelry and money in the suitcase carried as hand baggage missing from it when returned to her by the trainman who had taken it to assist her off the train.

In *Atlantic Coast Line R. Co.* v. *Barksdale, supra,* paragraph 3 of the syllabus states:

> "The duty placed upon the passenger by the requirements of the Interstate Commerce Commission to declare the value of baggage, and limiting the carrier's liability in case of loss to such declared valuation, applies only to baggage which the passenger has surrendered to the custody of the carrier for the purpose of being transported, as when baggage is 'checked' and does not apply to hand baggage taken into the coach by the passenger and generally retained in the passenger's possession, but only temporarily placed in the custody of the train officials for the passenger's accommodation and convenience

when entering or leaving the train. As to such hand baggage, there is, therefore, no duty resting upon the passenger to declare its value or the nature of its contents."

(Cf. *Nashville, C. & St. L. R. Co.* v. *Lillie, supra; Holmes* v. *North German Lloyd S. S. Company, supra.*)

In other cases involving buses where a passenger's baggage was not checked but merely placed on the rack in view of the passengers, it has been held that the carrier was not liable for loss thereof. The facts in these decisions indicate that the custody and possession of the luggage had not been turned over exclusively to the control of the carrier; therefore, the carrier could not be held responsible as an insurer. *Jensen* v. *Interstate Transit Lines,* 266 N. W. 9; *Posner* v. *New York Central R. Company,* 277 N. Y. S. 671; *Murphy* v. *Eastern Greyhound Lines,* 256 N. Y. S. 114.

Returning now to the facts in the case before the court:

The carrier's tariff covering the handling of baggage quoted herein on pages 3–4 provides for limitations of liability and charges on excess value. It does not, however, provide the manner in which agreements of passengers to such limitations shall be obtained. In the absence of any provisions covering that subject, it would seem that the general common law practice would be implied. In this case the record indicates that

no notices were posted in the station calling attention to the proposed limitation, the respondent was not given any receipt, check or other written notice containing information that a limitation was proposed, and that she had no knowledge of the tariff provision. In fact, it appears that the carrier did nothing more than publish, post and file the tariff and took no other steps towards bringing the matter to the attention of the passenger or of obtaining the consent of the passenger to a limitation. The publication and filing of such a purported limitation, unknown to all its customers, except conceivably to a very few, without otherwise bringing the matter to the attention of travelers, serves to entrap the unwary, regardless of the good faith of the carrier.

Paragraph "2" of the Rules, Regulations and Charges in the carrier's tariff, which deals with the subject of limitation of liability begins,

> "Carriers will not accept a greater liability than twenty-five (25) dollars. * * *." (See page 4 herein.)

The words, "will not accept," clearly imply negotiation and agreement, such as would be appropriate under the common law and under section 1 (5) of the Interstate Commerce Act, requiring all transportation charges to be just and reasonable. At common law a proposed limitation must in fact be brought to the attention of the shipper and he must be allowed to choose between a full

common law liability or a limited liability for a consideration. (*Hart* v. *Pennsylvania R. R. Co.*, 112 U. S. 331, 343.)

The claimed and stipulated value of the lost baggage is $615 (R. 4–5). Paragraph "2" of the carrier's tariff provides,

> "Any bag or parcel which is declared by the passenger to have a value in excess of Five Hundred (500) dollars will not be accepted for handling by red caps under the provisions of this tariff. Bag or parcel as used in this tariff means a bag or parcel including its contents."

This provision does not say that bags or parcels of a value exceeding $500 will not be handled, or will be refused; it says that such baggage will not be accepted if the passenger declares a value greater than $500. The purpose obviously is not to refuse to handle bags or parcels of a value exceeding $500 in value, but to limit liability. Again it appears that this maximum value rule was not brought to the attention of the public or of the respondent by any effective means, and that the only action was to publish, post and file the tariff.

Assuming, however, that this rule is a valid declaration that such parcels will not be accepted, it would be the duty of the carrier to exercise that claimed right in order to protect itself. The mere placing of such a provision in its tariff, according to the carrier's theory, imposes upon

every passenger the duty of examining the carrier's tariff and refraining from allowing the red caps to handle his bags if they exceed the stated value.

If the carrier contends that in the rush of passengers to and from trains it is impracticable to bring these limitations to the attention of passengers, it should explain how it is practicable for passengers to examine its tariffs before dealing with its red caps under the same circumstances. The fact is, as indicated by the record in this case, the carrier has made no effort to inform its customers of the proposed limitations, other than filing the tariff. It would appear that its object is not to have the passengers make the choice of liabilities which the tariff and the law allows, but merely to relieve itself from liability for claims.

We submit that the tariff, as worded, does not establish a limitation of liability but is nothing more than a statement of rates and a statement of policy the carrier will follow in dealing with its patrons. As such it will be bound by the tariff in that it may not charge more than the published rates, and it must follow those rules in its dealings with passengers. The tariff says nothing, however, as to how the desires of the passenger shall be ascertained. The notice of value must be in writing; but there is no showing of any procedure for the obtaining or making of such statements.

There are only two ultimate questions for the Court to decide, (1) was the service a service in interstate commerce, and (2) does the mere posting and filing of the tariff, with no further action by the carrier to obtain the assent of the passenger or to bring the matter to his attention, the passenger having no knowledge of the tariff, operate to limit or eliminate the carrier's liability.

If the carrier had taken steps to bring these matters to the attention of passengers, such as by posting notices in its stations and giving a check or stub with notice of the limitation stated thereon, the reasonableness of such practices might be an issue for initial determination by the Commission. But where, as here, the only action taken by the carrier is to file a tariff, the question whether that, alone, is sufficient to bind the passenger is, we submit, a question which may be initially determined by the court. Loss and damage claims are for determination by the courts and the court may make such determinations as are necessary to dispose of those matters. See *Chicago, M. & St. P. Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97, in which the Court held invalid bill of lading and tariff provisions which limited the carrier's liability. Compare *Moore* v. *Ill. Cent. R. Co.* 312 U. S. 630, 634, as interpreted in *Slocum* v. *Delaware L. & W. R. Co.*, 339 U. S. 239, 244–45, in which the Court decided, in an action for damages, questions

which would have required an initial decision by the Railway Labor Board if they had related to future conduct.

CONCLUSION

Acceptance, actual or implied, by the passenger of the terms under which the carrier assumes responsibility for transportation of baggage must be shown in some manner before the carrier may be charged only with limited liability. If a check or receipt for the baggage is issued at the time the passenger starts on his interstate journey, then knowledge of the carrier's regulations is imputed thereby. A different situation is presented where the passenger has not checked his baggage and the porter or other employee of the carrier exercises complete dominion and control over it. The relationship of bailor and bailee is then established, and the unexplained non-delivery of such baggage creates an obligation on the part of the carrier to reimburse the passenger for the full value thereof.

We submit that the Court should affirm the decision of the Supreme Court of Errors, for the reasons suggested herein.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

Respondents

F. R. DANAHER,
Counsel for Respondent

ARGUMENT OF THE RESPONDENT AGAINST ALLOWANCE OF THE WRIT OF CERTIORARI

ARGUMENT OF THE RESPONDENT AGAINST ALLOWANCE OF THE WRIT OF CERTIORARI

The facts, as found by the City Court of Meriden, and reiterated by the Supreme Court of Errors in the State of Connecticut, differ materially from those stated by the petitioner in its "Statement of the Matter Involved". Page 2 of the petition, lines 2 and 3; in "The Question Presented" Page 4, lines 2, 3 and 4; and in its "Argument" in several instances. It would appear that petitioner hopes, by repeatedly misquoting the Lower Court's opinion, to change what the Lower Courts actually found.

The City Court of Meriden found that the respondent purchased a ticket for a passage upon trains of the petitioner from the City of Meriden to the City of New Haven, both within the State of Connecticut, and to Fall River, Mass. See the Record, Page 7 (1).

The Supreme Court of Errors found that respondent purchased a ticket for passage " - - - - - - - - - from Meriden to New Haven, in Connecticut, and to Fall River, in Massachusetts. See the Record, Page 15.

It is agreed that the respondent got off the petitioners' train in New Haven; but there is nothing in the record to show that she went beyond that point, or that she at any time pursued a course that took her out of the State of Connecticut; and the petitioner is bound by the record.

The Court will not grant certiorari to review evidence and discuss specific facts. U.S. vs. Johnston 268, U. S. 220. But will examine the record. Chicago M. and S. T. P. Ry. Company vs. Coogan 271 U.S. 472.

Both Lower Courts found these facts the same way and the Supreme Court of the United States has held in the past that it will not review under such circumstances. Page vs. Arkansas Natural Gas Corporation 286 U.S. 269.

Both Lower Courts found that respondent's journey was intrastate not interstate. New York Central Railway Company vs. Mohney 252. U.S. 152.

Both Lower Courts found that respondent left her bag with the Defendant's Agent for safekeeping and not for transportation. Leigh vs. Smith 138 Connecticut 494.

Both Lower Courts found that the petitioner was liable as an ordinary bailee for the actual value of the property lost. Allen vs. South Pacific Company 213 P. Second 667.

CONCLUSION

Respondent concludes her argument that a writ of certiorari should not issue to review the judgment of the Supreme Court of Errors of the State of Connecticut for the reasons herein stated.

Respectfully Submitted

MRS. GEORGE NOTHNAGLE et al
RESPONDENT

by

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IN THE

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THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Petitioner*,

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RESPONDENTS' BRIEF

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v.

MRS. GEORGE NOTHNAGLE, ET AL.

RESPONDENTS' BRIEF

I

QUESTION INVOLVED

The question in this case is whether the plaintiffs below shall recover damages of $25 in accordance with the Railroad's offer of judgment or $615 which the trial court found to be the value of baggage and contents belonging to the plaintiffs, negligently lost by the defendant, and for which latter amount judgment was entered in favor of the plaintiffs.

II

STATEMENT OF THE CASE

On October 5, 1949, Mrs. George Nothnagle purchased a railroad ticket from Meriden, Connecticut, to Fall River, Massachusetts, via New Haven, Connecticut. At Meriden, Connecticut, at 11:19 a.m. on October 5, 1949, she boarded a train operated by the Railroad and rode as far as New Haven, arriving shortly after 11:30 a.m. At the New Haven railroad station, she was approached by a Red Cap, an employee of the Railroad, who solicited her baggage. She surrendered her baggage to the Red Cap with orders to have the baggage returned to her at the train due to leave for Fall River, Massachusetts, at 12:40 p.m. There is no finding that Mrs. Nothnagle boarded a train for Fall River or as to what she did when the Red Cap failed to return her baggage to her. At any rate, the Red Cap did not return her baggage to her at that time or any other time. The Red Cap gave Mrs. Nothnagle no ticket, no claim check, nor any other item with printing or statement of limitation of liability on it. There was no evidence that Mrs. Nothnagle either paid or intended to pay anything of value for the handling of her baggage. There were no signs posted calling to the attention of Mrs. Nothnagle that the defendant had attempted to limit its liability in any way. The plaintiff had no knowledge of a tariff limiting or purporting to limit liability for the handling of her baggage by the Red Cap. The trial court found that the baggage was lost through the negligence of the Railroad.

Suit was commenced against the Railroad. The Railroad claimed that its liability was limited to $25 on the ground that it had on file with the Interstate Commerce Commission a tariff entitled "New England Joint Tariff R. C. No. 3-N." The trial court overruled the Railroad's defense and concluded that the plaintiff's baggage was left with the defendant for safekeeping and not for transportation, that the baggage was not in interstate commerce, that the Railroad was a bailee, that the Connecticut law concerning bail-

ments determined the rights and liabilities of the parties and that judgment should enter for the plaintiffs to recover $615 damages plus costs.

III

ARGUMENT

A

The Railroad, in its Argument in its Petition for Certiorari, p. 9, said "She actually continued on her journey to Fall River because the Red Cap did not return her baggage to her 'at that time', i.e., at 12:40 P.M." There is no evidence whatever in this record, either in the Finding of the lower court or otherwise, that the plaintiff below "actually continued on her journey to Fall River"—either "because the Red Cap did not return her baggage"—or for any other reason. There is no evidence that the plaintiff continued her journey to Fall River at any time. There is no evidence that if she did continue her journey to Fall River that she did so "because the Red Cap did not return her baggage to her 'at that time.'" On the contrary, if we are to go outside the record and indulge in speculation, it is far more logical to speculate that she did *not* go to Fall River because her baggage had been lost; rather, that she went to the railroad station and called up her husband in Meriden to tell him of her loss, that he advised her to report her loss to the stationmaster at New Haven; that she could not continue her journey to Fall River because she had no baggage and no belongings to serve her needs if she had gone to Fall River.

These observations have no more place in this argument than the Railroad's contention simply for the reason that there is no evidence whatever on this subject. Mention is here made of these points, however, because of the tone created by the claim of the Railroad and the setting in which it would cast the circumstances out of which the loss arose.

B

The Railroad in its Argument in its brief to this Honorable Court, p. 6, said "At that time it is obvious she intended to continue her journey. Also, before she gave the bag to the Red Cap, she must have inquired when, and from where, the Fall River train would leave because she told him to return the bag to her at the train leaving for Fall River on Track #8 at 12:40 P.M." Once again, *arguendo*, the Railroad asserts conclusions and attempts to justify them, when it might with more justification have stated that the plaintiff learned the Fall River train would leave on Track #8 either because the public address system informed all passengers of the fact, or because the conductor told her as a matter of courtesy when he punched her ticket en route to New Haven from Meriden, to change trains at New Haven and to board the Fall River train there on Track #8, at 12:40 P.M.

Again, at p. 7 of its brief here, the Railroad says "At all times, she had the intent to go on an interstate trip." It is equally inferable that whatever her original intent, that intent was abandoned when her baggage was lost.

It is perfectly obvious that in going outside of the record or in substituting its own conclusions, the Railroad is seeking to substitute its judgment for that of the Supreme Court of Errors of the State of Connecticut which was bound by the facts as found by the trial court. The Connecticut Supreme Court of Errors, in its opinion, R. pp. 16-17, said: ". . . *The finding* describes the proposed journey from Meriden to Fall River as not being continuous. It was suspended for a substantial time in New Haven. It was to be resumed only when the plaintiff started to board the train which would take her from New Haven to Fall River. Her journey, *so for as it appears from the facts before us*, was intrastate." (Emphasis supplied)

Continuing the Court said, R. p. 17 ". . . In this very important aspect, the case at bar is distinguishable from

these cases, relied upon by the defendant (citing cases)."

Further, on the same p. 17, the Court said:

> "The trial court's conclusion that the plaintiff left her bag with the defendant's agent for safekeeping and not for transportation was a conclusion drawn from subordinate facts. . . . It is reasonably and logically supported by them and is not in violation of any rule or principle of law. . . . It renders the defendant liable as an ordinary bailee for the actual value of the property lost."

IV

Turning once again to the Railroad's Petition for Certiorari, its "Statement of the Matter Involved," pp. 1, 2 and 3, and to Petitioner's Brief in this Court, "Statement of the Case," pp. 2, 3 and 4, the Petitioner has failed to call to the attention of this Court, through inadvertence no doubt, certain important findings of the trial court. The facts found by the trial court and not mentioned by the Railroad unquestionably were deemed of importance both by the trier and by the Connecticut Supreme Court. In the Record at p. 8 we find paragraphs 12, 13 and 14 of the Finding reading as follows:

> "12. There was no evidence offered that Plaintiffs or either of them paid or intended to pay anything of value for handling said baggage at New Haven on October 5, 1949.
>
> "13. Said Red-Cap gave the Plaintiff no ticket or any other evidence of a claim or claim check nor any other item with printing or any statement of limitation of liability upon it, and said Plaintiff had no knowledge of the tariff referred to in Paragraph 9.
>
> "14. There were no signs posted at any point calling the attention of the passenger to the fact that the Defendant attempted to limit its liability by the use of the tariff referred to."

The Supreme Court in its opinion, R. p. 15, said:

> ". . . There was no evidence offered that she paid or intended to pay anything of value for the handling of the baggage. The redcap did not issue any ticket or check. There were no signs posted at any point calling the attention of passengers to the fact that the defendant's liability was limited by any tariff schedule. The plaintiff had no knowledge of any tariff limiting liability. From these subordinate facts, the court concluded that the baggage was left with the defendant for safekeeping and not for transportation in interstate commerce, and that the defendant's liability was determined by the laws of Connecticut concerning bailment. The appeal tests the correctness of this conclusion."

On what theory the Railroad fails either to mention or to discuss the facts found, as above, is not apparent. Nor is it clear on what reasoning the Railroad submits the various speculations and conclusions outside of the Record, as above pointed out. An examination of the Railroad's Statement or Argument, or both, will disclose varying postures in which the Railroad would pose the circumstances, depending, it would seem, on what mental reaction it seeks to achieve at the particular time. In addition to the instances previously mentioned, while it is realized that the Railroad's Brief before the Supreme Court of Errors in Connecticut is not before this Court, in fairness to the lower court it is hoped we may refer to the Railroad's Brief, below, at p. 4 where the Railroad in its Argument said:

> "At New Haven she had to change trains and wait about an hour for the Fall River train. Obviously, to save bothering with the bag during that time, she gave it to the Red Cap and told him to return the bag to her at the train leaving for Fall River on Track #8. In the meantime she probably was going to have a bite to eat in the station. . ."

Again, at p. 9 of its Argument in its Brief to the court below, the Railroad urged:

> "The trial court's ruling in the instant case was that the bag of plaintiff was left with defendant for safe-keeping and not for transportation and therefore was not in interstate commerce. (F. par. 17, R. 9). Apparently the court's feeling was that the transaction was similar to that where the plaintiff after alighting from the Meriden train might have taken her bag to the railroad station parcel room and checked it there or else put it in an automatic coin locker. Had that been done the bag would have been left for safe-keeping."

Undoubtedly the Connecticut Supreme Court had such things in mind when it recited the facts before it as will appear in its Opinion, R. pp. 14, 15 and 16.

V

The Exhibits in the trial court were not printed, pursuant to order of court, R. pp. 10, 11. It is presumed they will have been transferred to this Honorable Court as part of the original file. The New England Joint Tariff, R. C. N-3 referred to in Finding, par. 9, R. p. 8, reads, in pertinent part;

1. "Carriers parties to this tariff do not undertake to furnish Red Cap service generally or at all stations on their lines, or at all times at stations where such service is furnished. When and where and to the extent that Red Cap service may be furnished by the carriers for handling the hand baggage and other personal effects of passengers, the carriers' charge for such service will be at the rate of Fifteen (15) Cents for each piece so handled . . .

2. "Carriers will not accept a greater liability than Twenty Five (25) Dollars per bag or parcel, or the actual value of the bag or parcel if said actual value is less than Twenty Five Dollars, for each bag or parcel handled by Red Caps under the provisions of this tariff, unless a greater value is declared in writing by

the passenger. If a greater value is so declared in writing by the passenger, an additional charge of Ten (10) Cents per bag or parcel will be made for each One Hundred (100) Dollars or fraction thereof above Twenty Five (25) Dollars so declared. Any bag or parcel which is declared by the passenger to have a value in excess of Five Hundred (500) Dollars will not be accepted for handling by Red Caps under the provision of this tariff. Bar or parcel as used in this tariff means a bag or parcel including its contents.".

Both the trial court in its Finding, par. 14, R. p. 8, and the Supreme Court of Errors in its Opinion, R. p. 15, point out that there were no signs posted at any point calling the attention of the passenger to the fact that the Railroad attempted to limit its liability by the use of the tariff referred to. Nor did the plaintiff have knowledge of the tariff referred to.

Title 49 U. S. C. Sec. 20, par. 11 provides that any railroad receiving property for transportation from a point in one state to a point in another state shall issue a receipt for such property and shall be liable to the lawful holder thereof for any loss to such property caused by such railroad to which such property may be delivered. It is further provided that no contract, receipt, rule, regulation or other limitation of any character shall exempt the railroad from the liability so imposed. Any such railroad receiving, or any such railroad delivering said property so received shall be liable to the lawful holder of a receipt whether such receipt has been issued or not for the full actual loss or damage to such property caused by such railroad when transported on a through bill of lading notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or in any tariff filed with the Interstate Commerce Commission.

The Finding, par. 13, R. p. 8 and the Supreme Court below, in its Opinion, R. p. 15, find as a fact that the plaintiff received no ticket or any other evidence of a claim or

claim check or any other item with printing or any statement of limitation of liability upon it.

Title 49 U. S. C. Sec. 20, par. 11 further provides:

> "That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains . . . carrying passengers . . ."

There is no basis whatever, as will be disclosed by a reading of the applicable section of the statutes, for the issuance of a "tariff" which can limit the liability of the Railroad to this passenger as to baggage not "carried on passenger trains." There is no duty upon the passenger to declare the value of baggage unless she comes within an applicable statute or a regulation lawfully issued thereunder. There was no baggage check issued. The Red Cap delivered no claim check, he collected no fee. Mrs. Nothnagle's baggage was not, at the time of its loss, in a coach. For a substantial period of time, approximately an hour and ten minutes, the Railroad's employee accepted custody of the baggage. The passenger was under no duty which could devolve upon her by virtue of a lawful and applicable tariff which, the Railroad argues, would bind the passenger on the ground that her ticket for transportation had originally called for an interstate trip. Rather, so far as is disclosed by the record before us, her trip ended at New Haven and at the time of the loss of her baggage, it was purely intrastate.

As has been demonstrated above, the plaintiff was not on a train when her baggage was lost, nor was the baggage lost while being "carried" on a passenger train. On the contrary, the trial court found, Finding, par. 17, R. p. 9, and the court below in its Opinion, R. pp. 15-16, sustained that finding, that the baggage was left with the defendant for safekeeping and not for transportation in interstate

commerce—nor was it accepted even to be carried on to a train. On the contrary, the trial court found, Finding, par. 5, R. p. 7, that the plaintiff below had surrendered her baggage to the Red Cap with directions to have the baggage returned *to her* at the train due to leave for Fall River on Track #8 at 12:40 P.M.

VI

It is respectfully submitted that the writ should be dismissed. There is an adequate nonfederal ground to support the state court judgment. To the extent that it may be urged that there is a federal question present, the federal question was correctly decided *on the facts in this case.*

The situation here presented is completely different from *Galveston H. & S. A. Ry. Co.* v. *Woodbury,* (1920) 254 U. S. 357, 41 S. Ct. 114, and similar cases applicable where a passenger has checked his baggage from one point to another. Nor is it like *Kirchoff* v. *Southern Pacific Co.* (D. C. Cal. 1946) 68 F. Supp. 877, where the Red Cap issued a claim or baggage check reciting the limitations authorized by the Civil Code of California, cited therein. Here the passenger received no check. Here there is no finding that the passenger boarded a train. Here there was no fact or circumstance to put the passenger upon notice that a claimed limitation of liability existed.

The writ should be dismissed. *Fox Film Corp.* v. *Muller,* (1935) 296 U. S. 207, 56 S. Ct. 183; *Berea College* v. *Kentucky,* (1908) 211 U. S. 45, 29 S. Ct. 33; *Herb* v. *Pitcairn,* (1945) 324 U. S. 117, 125, 65 S. Ct. 463.

Respectfully submitted,

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